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No. 2] NEW DELHI, JANUARY 6—JANUARY 12, 2013, SATURDAY/PAUSA 16—PAUSA 22, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(सीमा शुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर आयुक्त का कार्यालय,

हैदराबाद-III आयुक्तालय)

हैदराबाद, 16 नवम्बर, 2012

सं. 03/2012-कस (एन टी)

का. आ. 54.—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली की अधिसूचना सं. 33/94-कस्टम्स (एन टी), दिनांक 1-7-1994 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, आंध्र प्रदेश राज्य के (i) खम्मम जिले के खम्मम शहरी मण्डल रेगुलचलका गाँव की सर्वेक्षण सं. 93 की 2.40 हेक्टेयर भूमि और (ii) खम्मम जिले के खम्मम ग्रामीण इलाके के मल्लेमडुगु गाँव की सर्वेक्षण सं. 79 की 0.95 हेक्टेयर भूमि को सीमा-शुल्क अधिनियम, 1962 (1962 के 52) की धारा 9 के अंतर्गत, निजी गैर सरकारी अनुबंधबद्ध भंडागारण (100% निर्यात आधारित इकाई) के उद्देश्य से भंडारण स्टेशन के रूप में घोषित करता हूँ।

[फा. सी.सं. VIII/16/198/2012-तक.]

जे. एस. चंद्रशेकर, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

(OFFICE OF THE COMMISSIONER OF CUSTOMS,
CENTRAL EXCISE AND SERVICE TAX,
HYDERABAD-III COMMISSIONERATE)

Hyderabad, the 16th November, 2012

No. 03/2012-CUS(NT)

S.O. 54.—In exercise of the powers conferred by Notification No. 33/94 -Customs (NT) dated 01-07-1994 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare (i) Survey No 93 admeasuring 2.40 Hectares of Regulchalka Village, Khammam Urban Mandal, Khammam District & (ii) Survey No. 79 admeasuring 0.95 Hectares of Mallemadugu Village, Khammam Rural Mandal, Khammam District, in the state of Andhra Pradesh, to be Warehousing Stations under Section 9 of the Customs Act, 1962 (52 of 1962) for the purpose of licensing of Private Bonded Warehouse (100% Export Oriented Unit).

[F. C. No. VIII/16/198/2012-Tech.]

J. S. CHANDRASHEKAR, Commissioner

नई दिल्ली, 3 जनवरी, 2013

का. आ. 55 .—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री एम. पी. शोरावाला (जन्म तिथि: 15-10-1947) को उनकी नियुक्ति की अधिसूचना की तिथि से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सेन्ट्रल बैंक ऑफ इंडिया के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक नामित करती है।

[फा. सं. 6/35/2011-बीओ-1]

विजय मल्होत्रा, अवर सचिव

(Department of Financial Services)

New Delhi, the 3rd January, 2013

S.O. 55 .—In exercise of the powers conferred by sub-section 3 (h) and (3-A) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Shri M.P. Shorawala (DoB: 15-10-1947) as part-time non-official director on the Board of Directors of Central Bank of India for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 6/35/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 4 जनवरी, 2013

का. आ. 56 .—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित बैंककारी विनियमन अधिनियम, 1949 (सहकारी समितियों पर यथा लागू) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा यह घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 (सहकारी समितियों पर यथा लागू) की धारा 11 की उप-धारा (1) के उपबंध कोल्हापुर जिला मध्यवर्ती सहकारी बैंक लि., कोल्हापुर, महाराष्ट्र पर 31 मार्च, 2003 तक की अवधि के लिए लागू नहीं होंगे।

[फा. सं. 01/01/2011-एसी (भाग-1)]

तौर्थ राम, अवर सचिव

New Delhi, the 4th January, 2013

S.O. 56 .—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 [As Applicable to Cooperative Societies (AACS)] read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on recommendation of the Reserve Bank of India, hereby declares that the provisions of

Sub-section (1) of Section 11 of the Banking Regulation Act, 1949(AACS) shall not apply to Kolhapur District Central Co-operative Bank Ltd., Kolhapur, Maharashtra, for the period till 31st March, 2013.

[F.No. 01/01/2011-AC (Part-1)]

TIRTH RAM, Under Secy.

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 8 जनवरी, 2013

आयकर

का. आ. 57 .—जबकि केन्द्र सरकार ने आयकर अधिनियम, 1961 (1961 का 43) (इसके आगे उक्त अधिनियम के रूप में उल्लिखित) की धारा 80झक की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए 1 अप्रैल, 1997 को आरंभ तथा 31 मार्च, 2002 को समाप्त अवधि के लिए संख्या का.आ. 193(अ), दिनांक 30 मार्च, 1999 तथा संख्या का.आ. 354(अ) दिनांक 31 मार्च, 2006 द्वारा वाणिज्य एवं उद्योग मंत्रालय (औद्योगिक नीति एवं संवर्धन विभाग), भारत सरकार की अधिसूचनाओं द्वारा औद्योगिक पार्क के लिए एक योजना निर्मित एवं अधिसूचित की है;

और जबकि मैसर्स गणेश हाउसिंग कारपोरेशन लि. जिसका पंजीकृत कार्यालय प्रथम तल, 'समुद्र', क्लासिक गोल्ड होटल के समीप, सी. जी. रोड, एलिसब्रिज, अहमदाबाद-380006 में है; इंटरनेशनल फार्मा एंड बायोटेक पार्क, मटोडा-सरी, अहमदाबाद, गुजरात में एक औद्योगिक पार्क विकसित कर रहा है।

और जबकि केन्द्र सरकार ने वाणिज्य एवं उद्योग मंत्रालय के दिनांक 5-11-2004 के पत्र सं. 15/21/04-आईपीएंडआईडी द्वारा उसमें उल्लिखित शर्तों एवं निबंधनों के अधीन उक्त औद्योगिक पार्क का अनुमोदन किया है;

और जबकि माननीय गुजरात उच्च न्यायालय ने 2012 के विशेष सिविल आवेदन 15962 में दिनांक 10-8-2011 के अपने आदेश में केन्द्रीय प्रत्यक्ष कर बोर्ड और वाणिज्य मंत्रालय को आयकर नियमावली, 1962 के नियम 18ग(4) के अनुसार धारा 80झक के तहत लाभों के लिए पूर्वोक्त औद्योगिक पार्क की आवश्यक अधिसूचना जारी करने के लिए परिणामी कदम उठाने का आदेश दिया है।

अतः अब, उक्त अधिनियम की धारा 80-झक की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा इस अधिसूचना के अनुबंध में उल्लिखित शर्तों एवं निबंधनों के अधीन मैसर्स गणेश हाउसिंग कारपोरेशन लि. द्वारा विकसित एवं अनुरक्षित तथा प्रचालित किए जा रहे उपक्रम को उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में अधिसूचित करती है।

अनुबंध

शर्तें एवं निबंधन, जिन पर मैसर्स गणेश हाउसिंग कारपोरेशन लि. को एक औद्योगिक पार्क की स्थापना के लिए भारत सरकार का अनुमोदन प्रदान किया गया है।

1. (i) औद्योगिक उपक्रम का नाम गणेश हाउसिंग कारपोरेशन लि., अहमदाबाद

- (ii) प्रस्तावित अवस्थान इंटरनेशनल फार्मा एंड बायोटेक पार्क, मटोडा-सरी, अहमदाबाद
- (iii) औद्योगिक पार्क का क्षेत्रफल 3,08,937 वर्गमीटर
- (iv) प्रस्तावित कार्यकलाप

एन आई सी कोड के साथ औद्योगिक कार्यकलाप की प्रकृति			
एनआईसी कोड			विवरण
क्रम सं. धारा प्रभाग समूह श्रेणी			
क	3	30 304	- औषधियों, दवाओं और संबद्ध उत्पादों का निर्माण

- (v) औद्योगिक उपयोग के लिए चिन्हित 82 प्रतिशत विनियोज्य क्षेत्रफल की प्रतिशतता
- (vi) वाणिज्यिक उपयोग के लिए चिन्हित 2 प्रतिशत विनियोज्य क्षेत्रफल की प्रतिशतता
- (vii) औद्योगिक इकाइयों की न्यूनतम संख्या 30 इकाइयां
- (viii) प्रस्तावित कुल निवेश 13, 71, 63, 834 रु.
- (ix) औद्योगिक प्रयोग के लिए निर्मित शून्य स्थान पर निवेश (राशि रुपए में)
- (x) औद्योगिक प्रयोग के लिए निर्मित 8,99,02,448 रु. स्थान पर निवेश सहित अवसंरचना विकास पर निवेश
- (xi) औद्योगिक पार्क के आरंभ होने की संभावित तिथि 15 जनवरी, 2006

2. औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50 प्रतिशत से कम नहीं होगा। किसी औद्योगिक पार्क के मामले में जो औद्योगिक उपयोग के लिए निर्मित स्थान प्रदान करता है, औद्योगिक स्थान के निर्माण की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60 प्रतिशत से कम नहीं होगा।

3. अवसंरचना विकास में सड़कें (संपर्क सड़क सहित), जल आपूर्ति एवं नालियां, सार्वजनिक बहिःस्त्राव शोधन सुविधा, टेलीकाम नेटवर्क, बिजली उत्पादन और वितरण, वातानुकूलन एवं ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप के लिए सामान्य उपयोग की हों जो अभिज्ञेय हैं और वाणिज्यिक शर्तों पर प्रदान किए जाते हैं।

4. का.आ. 354(अ), दिनांक 1 अप्रैल, 2002 के पैरा 6 के उप-पैरा (ख) में दी गई तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के विनियोज्य औद्योगिक क्षेत्रफल के पचास प्रतिशत से अधिक पर कब्जा नहीं करेगी। इस प्रयोजन के लिए एक इकाई का अर्थ एक और उससे अधिक राज्य या केन्द्रीय कर कानूनों के प्रयोजनार्थ कोई अलग और पृथक इकाई है।

5. विदेशी निवेश संवर्धन बोर्ड या भारतीय रिजर्व बैंक या उस समय लागू किसी कानून के अन्तर्गत विनिर्दिष्ट किसी प्राधिकारी द्वारा

विदेशी प्रत्यक्ष निवेश या अनिवासी भारतीय निवेश के लिए अनुमोदन सहित आवश्यक अनुमोदन लागू नीति एवं कार्यप्रणाली के अनुसार अलग से लिया जाएगा।

6. अधिनियम के अन्तर्गत कर लाभ इस अधिसूचना के पैरा 1(vii) में उल्लिखित इकाइयों की संख्या के औद्योगिक पार्क में स्थापन के बाद ही लिया जा सकता है।

7. मैसर्स गणेश हाउसिंग कारपोरेशन लि., अहमदाबाद उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिसमें आयकर अधिनियम, 1961 की धारा 80इक की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ प्राप्त किया जाना है।

8. यदि औद्योगिक पार्क 31-3-2006 तक शुरू नहीं हुआ तो आयकर अधिनियम, 1961 की धारा 80इक की उपधारा 4(iii) के अन्तर्गत लाभ प्राप्त करने के लिए उस योजना के अन्तर्गत प्रयोज्यता के अधीन औद्योगिक पार्क योजना, 2008 के अन्तर्गत नया अनुमोदन अपेक्षित होगा।

9. अनुमोदन अमान्य हो जाएगा तथा मैसर्स गणेश हाउसिंग कारपोरेशन लि., अहमदाबाद ऐसी अमान्यता के किसी अप्रत्यक्ष प्रभाव के लिए पूरी तरह जिम्मेदार होगा, यदि

(iii) जिस आवेदन के आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है उसमें गलत सूचना/मिथ्या जानकारी होती है अथवा उसमें कोई वस्तुगत सूचना प्रदान नहीं की गई है।

(iv) यह उस औद्योगिक पार्क के अवस्थान के लिए है जिसके लिए किसी अन्य उपक्रम के नाम से पहले ही अनुमोदन प्रदान किया जा चुका है।

10. मैसर्स गणेश हाउसिंग कारपोरेशन लि., अहमदाबाद (अर्थात् अंतरणकर्ता उपक्रम) द्वारा औद्योगिक पार्क का प्रचालन एवं अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करने के मामले में, अंतरणकर्ता एवं अंतरिती संयुक्त रूप से उपर्युक्त अंतरण के लिए अंतरणकर्ता एवं अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति एवं संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमी सहायता इकाई को सूचना देंगे।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क योजना, 2002 में शामिल शर्तों का पालन उस अवधि के दौरान किया जाना होगा जिसके लिए इस योजना के अन्तर्गत लाभ उठाए जाने हैं। मैसर्स गणेश हाउसिंग कारपोरेशन लि., अहमदाबाद द्वारा किसी शर्त के अनुपालन में असफल होने के मामले में केन्द्र सरकार उपर्युक्त अनुमोदन वापस ले सकती है।

12. केन्द्र सरकार के अनुमोदन के बिना परियोजना प्लान में कोई संशोधन या भविष्य में अभिज्ञान अथवा आवेदक द्वारा किसी वस्तुगत तथ्य को प्रकट न करने से औद्योगिक पार्क का अनुमोदन अमान्य हो जाएगा।

[अधिसूचना सं. 01/2013/फा. सं. 178/02/2008-आ.क.नि. 1]

सुरभि शर्मा, अवर सचिव

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 8th January, 2013

(Income-tax)

S.O. 57.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O. 193 (E), dated the 30th March, 1999 for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 31st day of March, 2006;

And whereas M/s. Ganesh Housing Corporation Ltd. having its registered office at 1st Floor, "Samudra", Near Klassic Gold Hotel, C.G. Road, Ellisbridge, Ahmedabad-380006, is developing an Industrial Park at International Pharma and Biotech Park, Matoda-Sari, Ahmedabad, Gujarat.

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/21/04-IP&ID dated 5-11-2004 subject to the terms and conditions mentioned therein;

And whereas the Hon'ble Gujarat High Court in its order dated 10-8-2011 in Special Civil Application 15962 of 2012 has directed the Central Board of Direct Taxes and the Ministry of Commerce to take consequential steps to ensure that necessary notification of the aforementioned industrial park is issued for the benefits under Section 80-IA in terms of Rule 18C(4) of the Income Tax Rules, 1962.

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Ganesh Housing Corporation Ltd., as an industrial park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure of the notification.

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Ganesh Housing Corporation Ltd.

- I. (i) Name of the Industrial Undertaking : Ganesh Housing Corporation Ltd., Ahmedabad.
- (ii) Proposed location : International Pharma and Biotech Park, Matoda-Sari, Ahmedabad
- (iii) Area of Industrial Park : 3,08,937 sq. meters
- (iv) Proposed activities :

Nature of Industrial activity with NIC code

S.No.	NIC Code				Description
	Section	Division	Group	Class	
A	3	30	304	—	Manufacture of drugs, medicines and allied products
(v)	Percentage of allocable area earmarked for Industrial use				: 82%
(vi)	Percentage of allocable area earmarked for commercial use				: 2%
(vii)	Minimum number of industrial units				: 30 Units
(viii)	Total investments proposed				: Rs.13,71,63,834
(ix)	Investment on built up space for Industrial use (Amount in Rupees)				: Nil
(x)	Investment on Infrastructure Development including investment on built up space for industrial use				: Rs. 8,99,02,448
(xi)	Expected date of commencement of the Industrial Park				: January 15, 2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Ganesh Housing Corporation Ltd., Ahmedabad shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the Industrial Park did not commence by 31-3-2006, fresh approval will be required under the Industrial Park Scheme, 2008 subject to the applicability under that Scheme for availing benefits under sub-section 4(iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Ganesh Housing Corporation Ltd., Ahmedabad shall be solely responsible for any repercussions of such invalidity, if

- (i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.
- (ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Ganesh Housing Corporation Ltd., Ahmedabad, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Ganesh Housing Corporation Ltd., Ahmedabad fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 01/2013/F. No. 178/02/2008-ITA-I]
SURABHI SHARMA, Under Secy.

संचार और सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 3 जनवरी, 2013

का.आ. 58.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा-संशोधित 1987) के

नियम 10(4) के अनुसरण में संचार और सूचना प्रौद्योगिकी मंत्रालय, दूरसंचार विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित किया जाता है।

1. मुख्य महाप्रबंधक का कार्यालय, कलकत्ता टेलीफोन्स, कोलकाता।
2. महाप्रबंधक दूरसंचार जिला, दुर्ग।
3. दूरसंचार जिला प्रबंधक, जगदलपुर।
4. उपमण्डल अभियंता (तार) बचेली।
5. उपमण्डल अभियंता (दूरभाष), जगदलपुर।
6. उपमण्डल अभियंता (आंतरिक), जगदलपुर।
7. उपमण्डल अभियंता (तार), कांकरे।
8. उपमण्डल अभियंता (तार), जगदलपुर।
9. उपमण्डल अभियंता (तार), कोण्डागाँव।
10. दूरसंचार जिला प्रबंधक, रायगढ़।

[सं. ई. 11016/1/2009-रा.भा.]

भारत भूषण कौरा, संयुक्त सचिव

**MINISTRY OF COMMUNICATIONS AND
INFORMATION TECHNOLOGY**

(Department of Telecommunications)

(O. L. DIVISION)

New Delhi, the 3rd January, 2013

S.O. 58.—In pursuance of rule 10(4) of the Official Language (use for official purpose of the Union), rules, 1976 the Central Government hereby notifies the following offices under the administrative control of Ministry of Communications and IT., Department of Telecommunications whereof more than 80% staff have acquired working knowledge of Hindi.

1. Office of the Chief General Manager, Calcutta Telephones, Kolkata.
2. General Manager Telecommunication District, Durg.
3. Telecom. District Manager, Jagdalpur.
4. Deputy Divisional Engineer (Telegram), Bacheli.
5. Deputy Divisional Engineer (Telephone), Jagdalpur.
6. Deputy Divisional Engineer (Internal), Jagdalpur.
7. Deputy Divisional Engineer (Telegram), Kanker.
8. Deputy Divisional Engineer (Telegram), Jagdalpur.
9. Deputy Divisional Engineer (Telegram), Kondagaon.
10. Telecom District Manager, Raigarh.

[No. E. 11016/1/2009-O. L.]

BHARAT BHUSHAN KAURA, Jt. Secy.

उपभोक्ता मामले, खाद्य एवं सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 1 जनवरी, 2013

का.आ. 59.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-विनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस प्रदान किए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि, वर्ष माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा. मा. संख्या	भाग	अनु.	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3857682	6 अगस्त, 2012	ओमकार ज्वेलर्स श्याम होल के पास, नहेंरुनगर, 80 फीट रोड हरि घवा रोड, राजकोट, गुजरात-360004	स्वर्ण एवं स्वर्ण मिश्र- धातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्ट	1417	0	0	1999
2.	3858583	9 अगस्त, 2012	याबा स्टील सर्वे नम्बर 224, नवयुग वेइट ब्रिज के सामने, जी आई डी सी नम्बर 4, घांघली रोड, शिहोर, जिला भावनगर, गुजरात 364240	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड़ और तार	1786	0	0	2008
3.	3859585	13 अगस्त, 2012	दिनेश इम्पेक्स “श्रीवम” वी. एच. भगवती होटेल 58, उद्योगनगर रोड, जामनगर, गुजरात-361004	वेल्टिंग, कटिंग और सम्बद्ध प्रक्रम में प्रयुक्त गैस सिलिंडरों के लिए दाब रेगुलेटर	6901	0	0	1988
4.	3862473	27 अगस्त, 2012	सरदार पोलिमर्स जी आई डी सी, प्लॉट नम्बर 3, पडधरी, जिला राजकोट, गुजरात 360110	जल आपूर्ति हेतु उच्च घनत्व पॉलीइथाइलीन पाइप	4984	0	0	1995
5.	3862675	27 अगस्त, 2012	मैसर्स विराट पम्पस सर्वे नम्बर 20, प्लॉट नम्बर 23, एवरेस्ट इन्डस्ट्रीयल एरिया, पूनम डम्पर के पास वंसीधर मेटल के सामने, टाटा परफैक्ट के पीछे, गोंडल रोड, राजकोट, गुजरात-360004	खुले कुएं के लिए निमज्ज्य पम्पसेट	14220	0	0	1994

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
6.	3862776	27 अगस्त, 2012	गर्ग कास्टील्स प्राइवेट लिमिटेड सर्वे नम्बर 431, शिहोर अहमदाबाद रोड, गांव वादिया तालुका शिहोर जिला भावनगर, गुजरात-364240	सामान्य संरचना कार्यों के लिए इस्पात	2062	0	0	2011
7.	3862877	28 अगस्त, 2012	धनंजय पोलिमस अमृत उद्योग पास, सोमनाथ इन्डस्ट्रीज एरिया पास गोंडल रोड, जिला राजकोट, गुजरात-360002	पेयजल आपूर्ति, मल और औद्योगिक बहिस्त्रावों हेतु उच्च घनत्व पॉलीइथाइलीन पाइप	4984	0	0	1995
8.	3862978	28 अगस्त, 2012	डीके पाईन बोर्ड प्राइवेट लिमिटेड सर्वे नम्बर 338, प्लॉट नम्बर 4, भचाऊ रोड, गांव भीमासर, तालुका अंजार, जिला कच्छ, गुजरात-370240	समुद्री उपयोग के लिए प्लाईवुड	710	0	0	2010
9.	3863071	28 अगस्त, 2012	डीके पाईन बोर्ड प्राइवेट लिमिटेड सर्वे नम्बर 338, प्लॉट नम्बर 4, भचाऊ रोड, गांव भीमासर, तालुका अंजार, जिला कच्छ, गुजरात-370240	सामान्य प्रयोजनों के लिए प्लाईवुड	303	0	0	1989
10.	3863172	28 अगस्त, 2012	डीके पाईन बोर्ड प्राइवेट लिमिटेड सर्वे नम्बर 338, प्लॉट नम्बर 4, भचाऊ रोड, गांव भीमासर, तालुका अंजार, जिला कच्छ, गुजरात-370240	ब्लॉक बोर्ड	1659	0	0	2004
11.	3864578	31 अगस्त, 2012	यूरो इंडिया सिलिंडर लिमिटेड प्लॉट नम्बर 588, 617, न्यू एरिया, कंडला स्पेशल इकोनॉमिक जोन, सेज, गांधीधाम, जिला कच्छ, गुजरात-370234	फिर से भरे जा सकने वाले जोड़ रहित इस्पात के गैस सिलेन्डर	7285	2	0	2004
12.	3864679	31 अगस्त, 2012	रैनबो पंप प्लॉट नम्बर जी 604, 605, मेटोडा जी आई डी सी, तालुका लोधिका, जिला राजकोट, गुजरात-360024	खुले कुएं के लिए निमज्ज्य पम्पसेट	14220	0	0	1994

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
13.	3864780	31 अगस्त, 2012	रैनबो पंप प्लोट नम्बर जी 604, 605 मेटोडा जी आई डी सी, तालुका लोधिका, जिला राजकोट, गुजरात-360024	निमज्जनीय पम्प सेट	8034	0	0	2002

[सं. केन्द्रीय प्रमाणन विभाग/13:11]
एम. राधाकृष्ण, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 1st January, 2013

S.O. 59 .—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3857682	6-8-2012	Omkar Jewellers Near Shyam Hall, Near Nehru Nagar, 80 Feet Road, Hari Ghawa Road, Rajkot, Gujarat-360004	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking- Specification	1417	0	0	1999
2.	3858583	9-8-2012	Baba Steel Survey No. 224, Opp. Navyug Weight, Bridge, GIDC No. 4, Ghanghali Road, Sihor, District : Bhavnagar, Gujarat-364240	High Strength deformed steel bars and wires for concrete reinforcement	1786	0	0	2008
3.	3859585	13-8-2012	Dinesh Impex "Shivam" Behind Bhagvati Hotel, 58, Udyognagar Road, Jamnagar, Gujarat-361004	Pressure regulators for gas cylinders used in welding, cutting and related processes	6901	0	0	1988
4.	3862473	27-8-2012	Sardar Polymers GIDC Plot No. 3, Paddhari, District : Rajkot, Gujarat-360110	High density polyethylene pipes for potable water supplies	4984	0	0	1995

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
5.	3862675	27-8-2012	Virat Pumps Survey No. 20, Plot No.23 Everest Industrial Area, Opp. Poonam Dumper, Village : Vavdi, Gondal Road, District : Rajkot, Gujarat-360002	Openwell Submersible Pumpssets - Specification	14220	0	0	1994
6.	3862776	27-8-2012	Garg Casteels (P.) Ltd., B-103 Leela Efce, Corporate Block, Near Aksharwadi, Waghawadi Road, District : Bhavnagar, Gujarat-364002	Steel for General Structural Purposes - Specification	2062	0	0	2011
7.	3862877	28-8-2012	Dhananjay Polymers Amrut Udhyog Nagar Near Somnath Industrial Area Near Railway Crossing, Gondal Road Highway, Rajkot, Gujarat-360002	High density polyethylene pipes for potable water supplies	4984	0	0	1995
8.	3862978	28-8-2012	Deekey Pine Boards (P.) Ltd., 74, Ward No. 10/A, Gandhidham, District : Kachchh, Gujarat-370201	Marine Plywood	710	0	0	2010
9.	3863071	28-8-2012	Deekey Pine Boards (P.) Ltd., 74, Ward No. 10/A, Gandhidham, District : Kachchh, Gujarat-370201	Plywood for general purposes	303	0	0	1989
10.	3663172	28-8-2012	Deekey Pine Boards (P.) Ltd., Survey No. 338, Plot No. 4 Bhachau Road, Village Bhimasar District : Kachchh, Gujarat	Block Boards	1659	0	0	2004
11.	3864578	31-8-2012	Euro India Cylinders Ltd., Plot No. 588-617, New Area, Kandla Special Economic Zone KASEZ, Gandhidham, District : Kachchh, Gujarat-370230	Refillable Seamless Steel Gas Cylinders- Specification - Part 2 : Quenched and Tempered Steel Cylinders with Tensile Strength Less than 1 100 MPa (1 12 kgf/mm ²)	7285	2	0	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
12.	3864679	31-8-2012	Rainbow Pumps Plot No. G-604/605 Metoda GIDC, Metoda, Taluka Lodhika, District : Rajkot, Gujarat-360024	Openwell Submersible Pumpsets- Specification	14220	0	0	1994
13.	3864780	31-8-2012	Rainbow Pumps Plot No. G-604,605 Village Metoda, Metoda G.I.D.C., Taluka-Lodhika, District : Rajkot, Gujarat-360024	Submersible Pumpsets- specification	8034	0	0	2002

[No. CMD/13 : 11]

M. RADHAKRISHNA, Scientist "F" & Head

नई दिल्ली, 1 जनवरी, 2013

का.आ. 60.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हों, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 16022 : 2012/आई एस ओ 3308 : 2000 नेमी विश्लेषण सिगरेट-धूम्रपान मशीन-परिभाषाएँ एवं मानक स्थितियाँ		31 दिसंबर 2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फ़र मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एफएडो/जी-128]

डॉ. आर. कं. बजाज, वैज्ञानिक 'एफ' एवं प्रमुख (खाद्य एवं कृषि)

New Delhi, the 1st January, 2013

S.O. 60.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against it :

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Eatablished	No. and year of Indian Standard, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	IS 16022 : 2012/ISO 3308 : 2000 Routine analytical cigarette-smoking machine— Definitions and standard conditions	—	31 December 2012

Copies of this Standard are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. FAD/G-128]

Dr. R. K. BAJAJ, Scientist 'F' & Head (Food & Agri.)

नई दिल्ली, 1 जनवरी, 2013

का.आ. 61.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संशोधित भारतीय मानक की संख्या और वर्ष संख्या	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)
1 आई एस 4985 : 2000	4, मार्च 2012	27-12-2012

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फ़र मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ सीईडी/राजपत्र]

डी. के. अग्रवाल, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 1st January, 2013

S.O. 61.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987 the Bureau of Indian Standard hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 4985 : 2000	4, March 2012	27-12-2012

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. CED/Gazette]

D. K. AGRAWAL, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 1 जनवरी, 2013

का.आ. 62 .—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आई एस 3087 : 2005	2, नवम्बर 2011	31-12-2012

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ सीईडी/राजपत्र]

डी. के. अग्रवाल, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 1st January, 2013

S.O. 62 .—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987 the Bureau of Indian Standard hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of The amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 3087 : 2005	2, November 2011	31-12-2012

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : at Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. CED/Gazette]

D. K. AGRAWAL, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 2 जनवरी, 2013

का.आ. 63.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आई एस 16011 : 2012 औषधि पैकेजबन्दी के लिए एल्यूमिनियम एवं एल्यूमिनियम मिश्र-धातु की पन्नी-विशिष्ट	-	30-11-2012
2	आई एस 16012 : 2012 बहु-पटलित एल्यूमिनियम केबल आवरण-विशिष्ट	-	30-11-2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एमटीडी 7/टी-108 एवं 109]

पी. घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 2nd January, 2013

S.O. 63.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :-

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	IS 16011 : 2012 Aluminium and aluminium alloy foil for pharmaceutical packaging-Specification	—	30-11-2012
2	IS 16012 : 2012 Poly-Laminated aluminium cable wrap-Specification	—	30-11-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. MTD 7/F-108 & 109]

P. GHOSH, Scientist 'F' Head (MTD)

नई दिल्ली, 3 जनवरी, 2013

का.आ. 64 .—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में एतद्वारा अधिसूचित किया जाता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है, वह रद्द कर दिया गया है और वापस ले लिया गया है :

अनुसूची

क्रम संख्या	रद्द किये गये मानक की संख्या और वर्ष	भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) में का.आ. संख्या और तिथि प्रकाशित	टिप्पणी
(1)	(2)	(3)	(4)
1.	आई एस 9163 (भाग 1) : 1979 अपरिवर्ती प्रवाह मापन की डाइलूशन पद्धतियाँ--भाग 1 निरंतर दर इंजेक्शन विधि	एस ओ 2325 दिनांक : 03-07-1982	आई एस 15898 (भाग 1) : 2012 द्वारा अतिक्रमित दिनांक 30-4-2012 से प्रभावी

[संदर्भ डब्लू आर डी 1/टी-27]

जे. सी. अरोड़ा, वैज्ञानिक 'एफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 3rd January, 2013

S.O. 64 .—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, it is, hereby notified that the Indian Standards, particulars of which is given in the Schedule hereto annexed has been cancelled and stands withdrawn.

SCHEDULE

Sr. No.	No. and Year of the Indian Standards cancelled	S. O. No. & Date published in the Gazette of India, Part-II, Section-3, Sub-section (ii)	Remarks
(1)	(2)	(3)	(4)
1	IS 9163 (Part 1) : 1979 Dilution methods for measurement of steady flow Part 1 Constant rate injection method	S. O. 2325 dated 3-07-1982	Superseded by IS 15898 (Part 1) : 2012 w.e.f. 30-4-2012

[Ref. WRD 1/T-27]

J. C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

कोयला मंत्रालय

नई दिल्ली, 8 जनवरी, 2013

का.आ. 65 .—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि से कोयला अभिप्राप्त होने की संभावना है;

और, रेखांक संख्या आरईवी/07/2012, तारीख 28 अगस्त, 2012 को उक्त अनुसूची में वर्णित भूमि का क्षेत्र के ब्यौरे अन्तर्विष्ट किया गया है, का निरीक्षण सेंट्रल कोलफील्ड्स लिमिटेड (भूमि और राजस्व विभाग), दरभंगा हाउस, रांची-834 029 (झारखंड) के कार्यालय में या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, कुजु क्षेत्र, जिला रामगढ़, झारखंड के कार्यालय में, या उपायुक्त, जिला रामगढ़, झारखंड के कार्यालय में, या महाप्रबंधक (खोज प्रभाग), आरआई-3, सेंट्रल माईन प्लानिंग और डिजाइन इंस्टीट्यूट, गोंडवाना प्लेस, कांके रोड, रांची के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता के कार्यालय में किया जा सकता है।

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसका पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि से कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति—

- (i) अधिनियम की धारा 6 के अधीन किसी नुकसानी या उक्त अधिनियम की धारा 4 की उप-धारा (3) के अधीन होने वाले नुकसान की संभावना के लिए प्रतिकर का दावा कर सकेगा ;
- (ii) अधिनियम की धारा 13 की उप-धारा (1) के अधीन समाप्त हो गई पूर्वक्षण अनुज्ञप्तियों के संबंध में या अधिनियम की धारा 13 की उप-धारा (4) के अधीन समाप्त हो गए खनन पट्टे के लिए प्रतिकर का दावा कर सकेगा और उक्त अधिनियम की धारा 13 की उप-धारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय को उपदर्शित करने के लिए भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को सुपुर्द करेगा।

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर, महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, कुजु क्षेत्र, जिला रामगढ़ (झारखंड) या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, दरभंगा हाउस, रांची-834 029 (झारखंड) के कार्यालय को भेजेंगे।

अनुसूची

आरा पुर्नसंगठन परियोजना

जिला-रामगढ़ (झारखंड)

(रेखांक संख्या आईवी/07/2012, तारीख 28 अगस्त, 2012)

नीचे उल्लिखित भूमि की बाबत सभी अधिकार :—

मौजा/ग्राम	थाना	ग्राम/थाना संख्या	जिला का नाम	क्षेत्र (एकड़ में)	क्षेत्र (हेक्टर में)	टिप्पणियां
1	2	3	4	5	6	7
आरा	मान्डु	156	रामगढ़	441.49	178.74	भाग
कुल :				441.49 (लगभग)	178.74 (लगभग)	

सीमा वर्णन :—

- क-ख-ग-घ रेखा बिन्दु 'क' से प्रारंभ होकर चौथा नदी के मध्य रेखा से गुजरती है और बिन्दु 'घ' पर मिलती है।
- घ-ङ रेखा बिन्दु 'घ' मुरपा और आरा ग्राम के सामान्य सीमा रेखा से गुजरती हुई बिन्दु 'ङ' पर मिलती है।
- ङ-च रेखा बिन्दु 'ङ' आरा ग्राम के भाग से गुजरती हुई बिन्दु 'च' पर मिलती है।
- च-छ-ज रेखा बिन्दु 'च' ग्राम आरा और अतना, आरा और सारूवेरा के सामान्य सीमा रेखा से गुजरती हुई बिन्दु 'ज' पर मिलती है।
- ज-क रेखा बिन्दु 'ज' ग्राम दुनी और आरा के सामान्य सीमा रेखा से गुजरती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[फा. सं. 43015/18/2012-पीआरआईडब्ल्यू-1]

बी. एस. राणा, अव्वर सचिव

MINISTRY OF COAL

New Delhi, the 8th January, 2013

S.O. 65 .—Whereas, it appears to the Central Government that coal is likely to be obtained from the lands in the locality described in the Schedule annexed hereto:

And, whereas, the plan bearing number Rev/07/2012, dated the 28th August, 2012 containing details of the area of land described in the said Schedule may be inspected at the office of the Central Coalfields Limited (Land and Revenue Department), Darbhanga House, Ranchi-834 029 (Jharkhand) or at the office of the General Manager, Central Coalfields Limited, Kuju Area, District Ramgarh, Jharkhand, or at the office of the Deputy Commissioner, District Ramgarh, Jharkhand or at the office of the General Manager (Exploration Division), RI-III, Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi or at the office of the Coal Controller, I, Council House Street, Kolkata;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from the land described in the said Schedule;

Any persons interested in the land described in the said Schedule may —

- (i) claim compensation under Section 6 of the Act for any damage caused or likely to be caused by any action taken under sub-section (3) of Section 4 of the said Act; or
- (ii) claim compensation under sub-section (1) of Section 13 of the Act in respect of prospecting licenses ceasing to have effect or under sub-section (4) of Section 13 of the Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of Section 13 of the said Act,

to the office of the General Manager, Central Coalfields Limited, Kuju Area, District-Ramgarh (Jharkhand) or General Manager, Central Coalfields Limited, Land and Revenue Department, Darbhanga House, Ranchi-834 029 (Jharkhand), within a period of ninety days from the date of publication of this notification.

SCHEDULE

Ara Re Organisation Project

District - Ramgarh (Jharkhand)

(Plan bearing number Rev/07/2012, dated the 28th August, 2012)

All Right in respect of land described below :—

Mauja/ Village	Thana	Village/ Thana number	Name of District	Area (in acres)	Area (in hectares)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Ara	Mandu	156	Ramgarh	441.49	178.74	Part

Total : 441.49 acres (approximately) or
178.74 hectares (approximately)

Boundary Description :

- A-B-C-D Line start from point 'A' passes through center line of Chotha Nadi and meets at point 'D'.
- D-E Line passes through point 'D', common boundary of village Murpa and Ara and meets at point 'E'.
- E-F Line passes through point 'E', part village of Ara and meets at point 'F'.
- F-G-H Line passes through point 'F', common boundary of village Ara and Atna, Ara and Sarubera and meets at 'H'.
- H-A Line passes through point 'H', common boundary of village Duni and Ara and meets at 'A'.

[F. No. 43015/18/2012-PRIW-I]

V. S. RANA, Under Secy.

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 66.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 01/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/50/2004-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 17th December, 2012

S.O. 66.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 17-12-2012.

[No. L-22012/50/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

Present : SRI JAYANTA KUMAR SEN, Presiding Officer

Reference No. 01 of 2005

Parties :

Sukumar Ghosh C/o Chakradhar Mondal,
Vill : Jemeri, PO : Bidhanbagh, Distt : Burdwan

V/s

The Agent, Amritnagar Colliery, M/s. ECL,
Burdwan

Representatives :

For the management : Sri P.K. Das, Advocate

For the union : Sri Sayantan Mukherjee,
(Workman) Advocate

Industry : Coal State : West Bengal

Dated : 29-8-2012

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Ministry of Labour vide its letter No. L-22012/50/2004-IR(CM-II) dated 27-12-2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the Management of Amritnagar Colliery of M/s. ECL in dismissing Sukumar Ghosh, Fitter Helper from service w.e.f. 5-3-99 is legal and justified? If not, to what relief is the workman entitled?”

2. Having received the Order of Letter No. L-22012/50/2004- IR(CM-II) dated 27-12-2004 of the above said reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 01 of 2005 was registered on 12-1-2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

3. The workman Sukumar Ghosh was suffering from T.B. which is an admitted fact found on perusal of the documents filed on behalf of the workman as well as the W.S. filed on behalf the management. A plethora of treatment papers issued by Colliery Hospital as well as Central Hospital, Kalla, Asansol (Ext.1 & 2 series). It has been submitted on behalf of the Management their the documents (Medical prescription and other treatment papers) were sent to Area Medical Officer for examination and confirmation its genuinity and ailment and from Ext. 7. It appears that the doctors has found all the documents including treatment papers are genuine one on the basis of Letter dated 28-12-98 Personnel Manager dated 28-12-98. But the enquiry officer found the workman guilty for unauthorized absent and accordingly, the workman has been dismissed by order dated. 05/06 March, 1999.

4. On perusal of the all documents, I find that the Management did no accept the medical papers filed by the workman as genuine one and only on that ground the workman Sukumar Ghosh has been dismissed. The learned Advocate of the workman was referred one decision of the Hon'ble Bombay High Court (Suresh A. Kerkar Vrs S.V. Novagi, P.O. Industrial Tribunal Ors.), but on perusal of the decision. I find that the fact of the present case is not similar to that case. But, however, I find not when it is an admitted fact that the workman was suffering from T. B.

and he was under medical treatment for a long time by the Colliery doctors and by some private doctors, the Management should take lenient view to such workman instead of, awarding capital punishment to the workman by dismissing him from service and threw his family members on the street and forced them for begging which in contrary to 'Natural Justice'. It further appears from applications of the workman (Ext. 4) dated 30-06-98 in which he prayed for permission to join on the basis of doctor's advice. Moreover the doctor who examined the documents has not been examined by the Enquiry Officer.

Finding with reasoning

Considering the whole facts and circumstances of the case described above, I find and come into conclusion that the action of the Managements of Amritnagar Colliery under M/s. ECL dismissing the workman/petitioner Sukumar Ghosh, Fitter Helper from service w.e.f. 5-3-99 is not legal and justified. So, Management is directed to allow the petitioner to join in his above post from 30-06-98 (the date of his applications) with full back wages from 30-06-98. Accordingly, it is hereby ordered that

ORDER

Let an "Award" be and same is passed as per above. Send the copies of the Award to the Government of India, Ministry of Labour, New Delhi, for information and needful.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 67.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/भ्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 49/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/334/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 17th December, 2012

S.O. 67.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 17-12-2012.

[No. L-22012/334/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : SRI JAYANTA KUMAR SEN, Presiding Officer

Reference No. 49 of 2005

Parties :

The management of Modern Satgram Colliery of
M/s. ECL, Burdwan

Vs.

The Org. Secy., CRMS, Bidhanbag, Burdwan.

Representatives :

For the management : Sri P.K. Das, Ld. Advocate

For the union : Sri M.K. Bandopadhyaya,
(Workman) Ld. Advocate

Industry : Coal State : West Bengal

Dated : 8-11-2012

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Ministry of Labour vide its Order No. L-22012/334/2004-I.R. (CM-II) dated 20-7-2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Eastern Coalfields Limited in denying employment in respect of Sh. Chandreswar Bhuiya dependant son of Late Karu Bhuiya of Modern Satgram Colliery is legal and justified? If not, to what relief is Sh. Chandreswar Bhuiya entitled to?"

(2) Having received the Order of Letter No. L-22012/334/2004-I.R. (CM-II) dated 20-7-2005 of the above said reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 49 of 2005 was registered on 19-8-05 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

(3) The case of the petitioner as represented by the Union concerned is that Sri Karu Bhuiya, son of Late

Sukhi Bhuiya died on 27-9-1991 leaving Sri Chandreswar Bhuiya his dependent handicapped son. His Death Certificate issued on 27-9-1991 by the Medical Officer of the Company. Sri Chandreswar Bhuiya duly applied for his employment under the provisions of NCWA. The Relationship Certificate was issued by an M.L.A. On verification of his relationship by the management, the applicant on his pre-appointment Medical Examination was declared unfit for underground job, so he was not offered any employment. It has been submitted by the Union that the applicant is a young energetic boy, capable of performing any kind of job on the ground level, as the management has already given employment to 25 persons in similar cases. Having deprived the applicant of his employment for an invaluable decade for the said period for which the management is responsible to pay him monetary compensation, as he is entitled to employment on compassionate ground as well as monetary compensation. The action of the management in denying his employment is illegal and unjustified and the applicant is entitled to get employment and other consequential benefits.

(4) On the other hand the plea of the management is that the instant reference is bad in the eye of law as it has been initiated during the pendency of a Civil Suit being T.S. No. 6 of 2000 of Ld. Civil Judge (Junior Division) 2nd Munsif at Asansol. Management further submits that the dispute is supposed to have commenced on 21-8-1996 when the agreement has been in force. It is also the case of the management that the applicant filed an application for employment on compassionate ground on 7-2-1996 after five years of death of his father. The management further submits that Sri Chandreswar Bhuiya appeared before the Medical Board on 21-8-1996 and he was declared unfit by the said board for underground job, as one eyed person. So, the action of the management in denying employment to Shri Chandreswar Bhuiya is legal and justified and he is not entitled to get any relief.

(5) Meanwhile, Mr. M. K. Bandopadhyaya, Ld. Advocate for the Union concerned appeared and filed xerox copies of Death Certificate of Karu Bhuiya, Medical Unfitness Report by the management and list of handicapped persons engaged in other job. He also filed a circular of Coal India Limited which shows that the visually handicapped persons should be given employment under the provision of NCWA.

(6) The management in his written statement has claimed that the instant reference is bad in the eye of law as it had been initiated during the pendency of a Civil Suit of Ld. Civil Judge (Junior Division) 2nd Munsif, Asansol. But neither this point has been raised at the time of argument nor any document regarding pendency of Civil Suit has been filed on behalf of the management.

(7) Before discussing the case the following admitted facts are to be mentioned :—

- (i) Sri Karu Bhuiya died on 27-9-1991 while in service.
- (ii) Sri Chandreswar Bhuiya, son of Late Karu Bhuiya applied for employment on 7-2-1996.
- (iii) Sri Chandreswar Bhuiya is a one eyed person and was declared unfit for underground job.

(8) Shri Chandreswar Bhuiya on his affidavit dated 17th June, 2009 has clearly stated that he was sent for the pre-appointment Medical Examination and was found medically unfit for underground job as one eyed man (Exhibit PW-1). A list of 25 persons of the same status of handicapped who were provided employment by the management is also enclosed (Exhibit PW-2). As such disqualifying the petitioner for the employment as dependent son of deceased employee by the management merely on ground of his unfitness for underground job (Exhibit PW-1) cannot be justifiable in the eye of law because the petitioner as dependent son of the deceased employee was quite capable of performing duties on the surface of the colliery.

(9) The management in its written statement (Para-4) has stated that vide Clause No. 9.3.2 of NCWA-VI, employment is to be given to one dependant of worker who died in service but the same has not been provided to the dependent son of the deceased employee on the ground that he is unfit for underground job, though Coal India Ltd. vide its Letter No. CIL/C-5B/MP/PWD Act 95/388-90 dated 10-4-01 has clearly mentioned the Category of job on surface to be provided to the handicapped persons.

(10) Further I find that Management has not filed any document before the Tribunal to show that a Civil Suit was already performing before the Court of 2nd Munsif, Asansol as submitted on behalf of Management.

(11) Considering the aforesaid facts it is held that the action of the management of ECL in denying the employment in respect of Shri Chandreswar Bhuiya, dependent son of late Karu Bhuiya of Modern Satgram Colliery, is quite illegal and unjustifiable. Therefore, petitioner Sri Chandreswar Bhuiya is entitled to employment as dependant son of deceased father Karu Bhuiya on the surface of the Colliery. The management is directed to implement the Award within one month from the receipt of the copy of Award after its publication in the Gazette of India.

ORDER

Let an "Award" be and the same is passed as per above. Send the copies of the "Award" to the Government of India, Ministry of Labour and Employment, New Delhi for information and needful.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 68.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 4/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/63/2004-आई आर. (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 17th December, 2012

S.O.68.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited and their workman, received by the Central Government on 17-12-2012.

[No. L-22012/63/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : SRI JAYANTA KUMAR SEN, Presiding Officer

Reference No. 4 of 2005

Parties :

The General Secretary, Koyala Mazdoor Congress, Near Premier Nursing Home, Gopalpur,
PO: Asansol, Dist: Burdwan

Vs.

The Agent, Sangramgarh Colliery, M/s. ECL,
Burdwan

Representatives:

For the management : S. P. K. Goswami,
Advocate

For the union : Sr. S. K. Pandey,
(Workman) Ld. Representative

Industry : Coal State : West Bengal

Dated - 29-11-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India

through the Ministry of Labour vide its letter No.L-22012/63/2004-IR(CM-II) dated 27-12-2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the Management of Sangramgarh Colliery under Salanpur Area of M/s. ECL in dismissing Sh. Chandi Charan Mondal, U.G. Loader from services is legal and justified? If not to what relief the workman is entitled to and from which date?”

2. Having received the Order of letter No.L-22012/63/2004-IR(CM-II) dated 27-12-2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 04 of 2005 was registered on 12-1-2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

3. From perusal of the Written Statement of the Management filed in the court on 21-11-06, I find the workman Chandi Charan Mondal was a permanent employee of Sangramgarh Colliery. It appears from the documents that the workman Chandi Charan Mondal, U.G. loader in said colliery met with accident twice in the year 1997 & 1998 and sustained serious injuries vide letter No. ECL/CMS/C-6B/G.M. (P & IR) dated 10th July 2000 of Sri I.P. Singh, General Manager (P & IR) and he (workman) had been given light duty either on surface and underground. It further appears from record that he was under Medical Treatment in Central Hospital Kalla till 21-12-2002. From charge-sheet it appears that the management has found him absent unauthorisedly from 01-06-02 to 10-02-03 that is only for 8 months 10 days and for this short period the Management dismissed the workman from service. It further appears that during enquiry proceeding the workman had challenged the charge and he had taken plea of his illness constantly but the Management did not consider the same which is against the ‘Natural Justice’. Further I find that the workman died subsequently and his wife Rita Mondal has been substituted in his place on her prayer.

4. Thus, I find, after considering the documents filed behalf of Management and workman Chandi Charan Mondal, and the argument advanced on behalf of both sides, that the action of management of Sangramgarh Colliery under Salanpur Area of M/s. ECL in dismissing the workman from service is not at all legal and justified on the ground of “Natural Justice”.

Finding with reasoning

Accordingly the order of dismissing Late Chandri Charan Mondal is hereby set aside and the Management is directed to give all the dues to Rita Mondal, wife of Late Chandri Charan Mondal from 01-06-2002. Management is further directed to consider to provide any job to his wife namely Rita Mondal on compensate ground.

ORDER

Let an "Award" be and same is passed as per above. Send the copies of the Award to the Govt. of India, Ministry of Labour, New Delhi, for information and needful.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 69.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 30/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/222/2003-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 17th December, 2012

S.O. 69.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. Haripur Colliery, Kenda Area, M/s. ECL, and their workman, received by the Central Government on 17-12-2012.

[No. L-22012/222/2003-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

PRESENT : SRI JAYANTA KUMAR SEN, Presiding Officer

REFERENCE No. 30 of 2004**PARTIES :**

The management of Haripur Colliery, M/s. ECL,
Burdwan

Vs.

The Gen. Secy., KMC, Asansol (WB).

Representatives :

For the management : None

For the union (Workman): Sri Rakesh Kumar,
Ld. Representative

Industry : Coal State : West Bengal

Dated -4-12-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10. of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/222/2003-IR (CM-II) dated 12-05-2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Haripur Colliery under Kenda Area of M/s. Eastern Coalfields Limited in dismissing Shri Narayan Bouri, U.G. Loader from services on 9-12-88 is legal and justified? If not, to what relief he is entitled to?"

Having received the Order of Letter No, L-22012/222/2003-IR (CM-II) dated 12-5-2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No, 30 of 2004 was registered on 21-6-2004 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims, In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri Rakesh Kumar, General Secretary of the Union appears and submits that the case may be closed as the workman has already joined in service. It seems that they have now no interest in this case and do not want to proceed further. Since the workman has already joined in service, "No Dispute" exists between both the parties. As such the case is closed and accordingly an order of "No Dispute" is hereby passed,

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 70.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ए. एस. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 96/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2012 को प्राप्त हुआ था।

[सं. एल-42012/171/2003-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 17th December, 2012

S.O. 70.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 96/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Archaeological Survey of India, and their workmen, received by the Central Government on 17-12-2012.

[No. L-42012/171/2003-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJUNIGAM, Presiding Officer

I.D. No. 96/2004

Ref. No. L-42012/171/2003-IR (CM-II)

dated : 12-10-2004

BETWEEN

Sh. Surender Singh,
Rastriya Adhayaksha Bhartiya Puratatuv Servakhan
Karamchari Parishad (INTUC),
68, Sector 16, Sikandra
Agra

(Espousing cause of Shri Vijay Singh & 59 others)

AND

The Chief Superintending
Horticulturist Archaeological Survey of India
(Garden Branch) C.H. Office,
Taj Mahal East
Agra (U.P.) - 282001

AWARD

1. By order No. L-42012/171/2003-IR (CM-II) dated: 12-10-2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by

clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Surender Singh, Rastriya Adhayaksha, Bhartiya Puratatuv Servakhan Karamchari Parishad, (INTUC), 68, Sector 16, Sikandra, Agra and the Chief Superintending Horticulturist, Archaeological Survey of India, (Garden Branch) C.H. Office, Taj Mahal East, Agra for adjudication.

2. The reference under adjudication is :

“Ky a Chief Horticulturist, Archeological Survey of India, Agra Dwara Shri Vijay Singh Atmaj Shri Om Praksh Evam Anya 59 Karmkaaron (Soochi Sanlagn) Ko Sewa Se Hatae Jaane Ke Baad Variyata Ke Adhaar Par Punah Niyojan Main Nahi Liya Jana Nayayochit Hai? Yadi Nahi To Sambandhit Karmakaar Kis Anutosh Ke Haqdaar Hai?”

3. The case of the workman's union, in brief, is that the workman Vijay Singh and 59 others had been working with the Garden Branch of ASI, Agra during 01-08-87 to 31-01-1997 from time to time; and after terminating their services w.e.f. 01-02-1997 they have not been reengaged as per their seniority; although the management of the ASI has engaged other new workmen, in violation to the provisions contained in Section 25 H of the I.D. Act, 1947. It has been submitted by the union that the workmen have been engaged in maintenance work of the garden and other related work, which perennial in nature. It has further submitted that the opposite party, ASI is industry within the provisions of I.D. Act. The workman's union has alleged that the management has terminated the services of the workmen without any notice or notice pay in lieu thereof in violation to the provisions of the Section 25 F of the Act; and accordingly, has prayed that the workmen be reinstated with full back wages with continuity in services and temporary status.

4. The management of the ASI has opposed the claim of the workman's union by filing written statement wherein it has submitted that the present claim of the union is not maintainable the ASI does not comes with in the definition of 'Industry' as defined in Section 2 (j) of the I.D. Act. It has further submitted that the applicants were engaged as casual labours on seasonal basis and their engagement was on the basis of availability of work in different garden and none of the casual labours had worked for 240 days in a calendar year and even some of the applicants had never got engaged; accordingly, there was no need of complying with the provisions of Section 25 F of the I.D. Act. Thus, the management of the ASI has prayed that the claim of the workman's union be rejected without any relief to the workmen concerned.

5. The workman's union has filed rejoinder wherein it has only reiterated its averments already made in the statement of claim and has introduced nothing new.

6. The trade union has examined Yetendera Singh; whereas the management has examined Shri RRP. Sinha, Superintending Horticulturist (I/C) in support of their respective claim. The parties cross-examined each other's witnesses and availed opportunity to forward written as well as oral arguments.

7. Heard arguments of the representatives of the both the parties and perused entire material available on file.

8. The workman's union has filed photocopy of following relevant documents, along with their statement of claim and list of documents dated 04-04-2005, paper No. C-10, in support of their claim :

- (i) Affidavit of Shri S.H. Ramachandraiah, Dy. Suptd. Horticulturist, ASI, Agra paper No. 5/31 to 5/42.
- (ii) Seniority list of garden attendants (10th passed & above) as on 31.07.2003, paper No. C-11 to 11/3.
- (iii) Advertisement regarding recruitment of garden attendants, paper No. 11/6.
- (iv) Office order dated 13-10-83 regarding regularization of casual employees in Group 'D' posts, paper no. 11/8, 11/9.
- (v) OM dated 24-3-93, regarding regularization of casual employees in Group 'D' posts in Circle/Branch offices of ASI, paper No. 1/10.
- (vi) List of new and other workmen engaged in place of workmen, paper No. 11/13.
- (vii) OM dated 17-03-2003, paper No. 11/14.

9 In rebuttal, the management has filed photocopy of following documents in support of their contentions :

- (i) Award dated 25-11-99 of CGIT, Jaipur.
- (ii) order dated 16-12-96 in respect of O.A. No. 192/96.
- (iii) case law the Range Forest Officer v. S. T. Hadimani SC 2002 (2) 238.
- (iv) Award dated 14-09-2001 of CGIT, Bhubaneshwar.

The management has also filed photocopy of seniority list (working days) of daily paid labourers vide list dated 14.09.2006, paper No. C-27 in view of order dated 15-02-2006.

10. The authorized representative of the union has stressed on the fact that the present industrial dispute is neither for reinstatement nor for regularization; but is for non re-engagement of the workmen after their retrenchment in compliance of provisions contained in Section 25 H of the I.D. Act, 1947. He has further argued that the ASI looks after maintenance of the monuments and raises

money by charging money from the visitors/tourists in form of entry tickets and the same is being utilized in upkeep of the monuments, thus, it carries out commercial activity and comes within the purview of the triple test formulated by the Constitutional Bench of Hon'ble Supreme, Court in 'Bangalore Water Supply and Seveage Board etc. vs. A. Rajappa and Others etc. (1978) 2 SCC 213'.

11. In rebuttal, the authorized representative has argued that the establishment of ASI is not an 'industry' as it carries out sovereign function and further that the workmen concerned have never been appointed by the management of ASI rather work had been taken from them in peak season as and when required, thus, they never completed 240 days of continuous working and therefore, they were not entitled for the benefits of provisions contained in Section 25 F of the Act. It was further submitted that the maintenance of garden is temporary and seasonal work and the same is not perennial in nature thus there is no need to appoint regular staff for carrying out such casual nature of work. The representative has argued that reference order is bad in the eye of law as there is no mention of date of engagement or termination in respect of the workmen as well as there is no mention of violation of Section 25-H in the schedule of reference.

12. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and scanned entire, evidence on record.

13 It is the case of the workman's union that the workmen have been engaged by the opposite party ASI from 01-08-87 to 31-01-97 from time to time and the management has not taken them on work w.e.f. 01-02-97, although it has engaged other new workmen after disengaging them, in violation of the provisions contained in Section 25 H of the Industrial Disputes Act, 1947. It has also been pleaded that the workmen were engaged for carrying out maintenance of gardens, which is a perennial nature of work; hence, the management ought to have re-engage them on the basis of their seniority before engaging new workmen; but the management failed to do so. The workman's union has also stressed that the ASI is an 'industry' within the provisions of Section 2 (j) as it earns money by means of tickets from the visitors and tourists (Indians as well as foreigners).

14. Per contra, the main contention of the opposite party is that the establishment of ASI is not an industry and the work carried out by the department does not comes within the purview of commercial activity. Further, it has heavily relied on the fact that none of the workmen has worked for 240 days continuously in any calander year and accordingly, compliance of provisions of Section 25 F was not necessary while terminating the services of the workmen who were engaged casually as and when their services were required for maintaining the gardens.

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15. After going through the rival contentions of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the parties have relied on verdict of Hon'ble Apex Court Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & Others case; wherein it has been observed that

"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religions but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

It is well known that the Archeological Survey of India is indulged in upkeep of the ancient monuments in order to preserve the cultural heritage of this country. For achieving this aim the ASI is being funded by the Government of India and it most of the times charges entry fee from the visitors, which is being utilized for the maintenance and upkeep of the monuments and its gardens etc. The workman's union has contended that the work carried out by the ASI is similar to CPWD and PWD, which are industry within the purview of the Act. Also, it has indicated that the nature of work carried out by ASI qualifies the triple test, formulated by Hon'ble Apex Court in Bangalore Water Supply case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that ASI is at par with the CPWD, PWD and other municipalities, which are covered under Industrial Dispute; and accordingly, come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

16. It was the case of the workman's union that the workmen had been working with the management of the ASI and their services have been retrenched by the management without any rhyme or reason; but after their retrenchment the management has not bothered to re-engage them; rather it has engaged other new workmen in violation to the provisions of Section 25 H of the I.D. Act, 1947. The workman in his evidence has stated on oath that the, management has not re-engaged the retrenched workmen on the basis of their seniority but has engaged fresh workmen in there place and they are still working. It

has relied on the list of such newly appointed workmen; paper No. 5/4, annexed with his statement of claim; wherein it has given the names of as many as 70 workmen with their parentage who have been engaged after retrenchment of the workmen. It has been further submitted that the union summoned the muster rolls and seniority list to substantiate their version regarding continuous working; but the management neither filed the muster roll of concerned workmen nor the seniority list. It is also relevant to mention that there is no cross-examination on the point.

17. Per contra, the management's case is that the work performed by the workmen is not of perennial nature but intermittent and casual. The workmen were engaged as per need; and accordingly, the workmen never completed 240 days of working in any calendar year. In cross-examination the management witness accepted that the workmen took care of garden and other monuments. It was further stated that the preservation and upkeep of the historical monuments is being done by the ASI and the said work is being done by the helpers (parichar). It was stated that there are near about 400 helpers in Garden Division - I who are permanent and there is about 20 acers of garden in Taj Mahal premises, which comes within his division; but he could not state the exact figure of the helper working there. The witness further stated that in Agra circle manual and gardening work is being done by the helpers, likewise in other monuments at Fatehpur Sikari, Sikandra etc. manual work is done by the helpers. He has also certified the genuineness of the office memorandum dated 17-03-2003, paper No. 5/20 with the statement that it pertains to his office and the same was issued to the Garden Incharge. He expressed his inability to confirm as to whether Heera Lal, Ali Mohammad, Ravinder, Prakash, Ram Gopal, Nafis, Ramesh, Kishore, Dinesh were appointed or not and whether they were junior to the workmen under dispute. Further he could not explain as to whether 70 workmen, mentioned in the list filed by the workman, paper No. 11/13, were engaged after disengaging the workmen.

18. The union prayed this Tribunal that seniority list in respect of casual labour be summoned from the management; and accordingly, the management was ordered to file seniority list vide order dated 15-02-2006. The management in response thereto filed photocopy of seniority list (working days) of daily paid workers vide application C-27. The union in rebuttal filed affidavit of Vijay Singh; wherein it was stated that the management has not complied with the directions of the Tribunal for filing of seniority list and the Muster Rolls and instead has field Muster Rolls in respect of other casual labours engaged in Mahtab Bagh only.

The union has relied upon the office memorandum dated 17-03-2003 of the ASI, paper No. 5/20; which is duly certified by the management witness that it belonged

to his department; wherein instructions have been issued to all Garden In charges to give preference to old daily rated agricultural labours while engaging the labours for casual/seasonal works. A bare perusal of above memorandum itself shows that the authorities of the ASI were not only instructed but were expected to give preference to the old casual workmen over the new ones. The management witness has shown his inability of having any knowledge about any seniority list of the casual workers; but the compliance of above circulars needs for preparation of casual labour seniority list. Hence, in view of above, it is unbelievable that the management did not maintain any seniority list in respect of casual labour and it is relevant to note that the management did not file such seniority list with a view to defeat the claim of the workman.

19. Admittedly, the workmen were engaged to carry out casual nature of work, this fact has been admitted by the management in its written statement; while it has simultaneously denied the continuous engagement of the workman; but its denial is not specific as it was required to come forward with the details of the working days. The management has relied on *Bank of Baroda vs Ghemarbhi Harjibhai Rabari* 2005 (105) FLR 383; wherein Hon'ble Apex Court has held that the burden of proof that the claimant was in employment of a Management primarily lies on workman who claims to be a workman by producing vouchers of payment of salary etc.

20. The union has come forward with a case that the workmen were engaged 01-08-87 to 31-01-97 from time to time and after their retrenchment the management did not bothered to re-engage them though it engaged other fresh faces. The union in order to substantiate its contention, summoned the details from the management; but it failed to file the same.

Hon'ble Gujarat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda* 2010 AIR SCW 542; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Hence, in view of above case law, an adverse inference could easily be drawn against the management. The management was ought have come forward with specific case as to when the workmen worked with it, with substantial proof thereof.

21. Terms of reference orders relates to violation of provisions contained in Section 25 H of the Industrial Disputes Act, 1947. Section 25 H reads as under :

25 H. — Re-employment of retrenched workmen. —

"Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. "

A bare perusal of the above section indicates that the said Section provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment shall have preference over other persons. Rule 77 and 78 of the Industrial Deputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule, 77 requires maintenance of seniority list fall workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their services in that category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement of Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment.

Rule 77 requires the employer to maintain list seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority belong. Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling the category of Section 25 F are entitled to be placed higher than those who do not fall in that category. Is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of Section 25 H to the other retrenched workmen not covered by Section 25-F does not, in any manner, prejudice those covered by Section 25-F because the question of consideration of any retrenched workman not covered by Section 25 F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in Section 25-H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect.

The distinction between Section 25-F and 25-G of the Act was recently reiterated in Bhogpur Co-op. Sugar Mills Ltd. v. Harnesh Kumar 2006 (111) FLR 1202 (SC), in the following words:

“We are not oblivious of the distinction in regard to the legality or the order of termination in a case where Section 25 F thereof applies on the other. Whereas in a case where Section 25 F of the Act applies the workman is bound to prove that he had been in continuous service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions or Sections 25-G and 25-H thereof he may not have to establish the said fact.

22. Admittedly, the management of ASI engaged the workmen to take their services for maintenance of gardens and other monuments, which is perennial in nature. This fact is corroborated by their own witness who stated that upkeep and maintenance of the monuments and garden is being done by the helpers (Parichar) and he further stated that there are approximately as many as 400 helpers in Taj Mahal premises, then it could be well understood that to look after other monuments at Agra, Fatehpur Sikari, Sikandra the management of ASI would be in need of large number of helpers and this maintenance cannot be said of seasonal in nature as this is never ending process and continues round the year. Then management cannot say that they engaged the workmen as per availability of work on casual basis. Further, even if the argument of the management is accepted that they have been terminated on non-availability of work and they were not entitled for benefits of Section 25 F, even then as per provisions contained in Section 25 H of the I.D. Act, 1947 and Rule 78 of the I.D. Act, 1957, on re-availability of work, the management was ought to re-engaged those workmen who had already worked with it as required by the Section 25 H and their own office memorandum dated 17.3.2003, paper No. 5/20.

There is no iota of evidence from the management regarding this fact that the workmen were not covered by the provisions of Section 25 F and the burden to prove that the workmen did not worked for 240 days in the year concerned was on the management, particularly when the workmen summoned the seniority list and the management did not file complete seniority list; but filed working details of few of them only. Hon'ble Gujrat High Court in Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc.. in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to

constitute continuous service. Thus, in view of law laid down in the above case law the, the management failed to prove that the workmen were not entitled for protection of Section 25 F; and also that it made efforts to re-engage those workmen who were retrenched due to non-availability of work as envisaged by the Rule 78 of the I.D. Act (Central), 1957.

23. The case of the union is that the workmen were retrenched and thereafter were not re-engaged whereas other new faces were introduced into the management to carry out the same work. The management witness shown his inability to certify this fact; but even then this could not be easily accepted that the all those new 70 workmen (mentioned in the list, paper No. 11/13, filed by the union) were not engaged, particularly in the absence of any evidence in rebuttal by the management. The management has focused its defence on the issue that the workmen did not completed 240 days working to get the benefits of Section 25 F; but the schedule of reference and case of the union is entirely different, which indicates that the management, by not re-engaging the workmen on availability of work and engaging new faces, violated the provisions contained in Section 25 H and for attracting the provisions of section 25 H the workman need not establish that he had been in continuous service of 240 days during twelve months preceding the order of termination. Thus, the management utterly failed to defend the case on proper lines by not producing any evidence with regard to the fact that it made efforts to re-engage the previously retrenched workmen first and on their not turning up, it went for to engage the new faces.

24. Thus, in view of the discussions made above, I am of the considered opinion that the management of ASI did not comply with the provisions of Section 25 H of the I.D. Act, 1947 by not re-engaging the workmen after their retrenchment and employing new workmen. Hence, I come to the conclusion that the action of the management of the ASI, Agra in not re-engaging the workman after their retrenchment was unjustified and resultantly, the workmen Vijay Singh and 59 others are entitled for reinstatement. As regard admissibility of back wages, it is admitted that they were engaged as casual labour and working as such i.e. were not regular employees, therefore, they have no right for back wages etc. in view of rule 'no work no pay'; but they shall be entitled for continuity of service and other consequential benefits. Further, in case of workmen who attained the age of superannuation during the pendency of present dispute, shall be entitled for retrieval benefits as per service rules.

25. Award as above.

LUCKNOW.
27-11-2012.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 71.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 99/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2012 को प्राप्त हुआ था।

[सं. एल-39025/1/2010-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 17 December, 2012

S.O. 71.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2011) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 17-12-2012.

[No. L-39025/1/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 26th November, 2012

Present : A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 99/2011

(In the matter of the dispute for adjudication under Section-2A, Clause-(1) of sub-section (2) of the Industrial Disputes Act, 1947, 14 of 1947 (as amended by Act-24 of 2010 w.e.f. 15-09-2010), between the Management of Indian Overseas Bank and their Workman)

Between

Sri M. Rajagopal ... 1st Party/Petitioner
20/48, Sundrapuram Street
Manadadurai-630606
Sivagangai District

And

1. The Chief Manager ... 2nd Party/1st
Disciplinary Authority Respondent
Indian Overseas Bank,
CDAC Central Office,

763, Anna Salai
Chennai-600002

2. The Deputy General Manager ... 2nd Party/2nd
Appellate Authority Respondent
Indian Overseas Bank,
Central Office,
763, Anna Salai
Chennai-600002

3. The Assistant General Manager ... 2nd Party/3rd
Indian Overseas Bank, Respondent
Vigilance Department
763, Anna Salai
Chennai-600002

Appearance :

For the 1st Party/ : M/s. R. S. Anandan, Advocates
Petitioner

For the 2nd Party/ : M/s. N.G.R. Prasad, V. Stalin,
Management Advocates

AWARD

2. This is an Industrial Dispute Taken on file by way of Direct Filing of Petition under 2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15-09-2010). The same was taken on file as ID 99/2011 and notices were issued to both Petitioner also re-entered appearance through Advocate. Respondent filed his Counter Statement in reply to the petition under Section-2(A)(2)(1) of the ID Act.

3. The averments in the petition read as follows :

Petitioner is a workman as defined in the Industrial Disputes Act, 1947. Respondent is the employer. Petitioner was a sub-staff under Respondent with Roll No. 29484. While he was working as a messenger at Indian Overseas Bank at Avudayar Koil Branch, Pudukottai District he was served a transfer order dated 25-11-2009 issued by the Chief Manager, Personnel Administration Department, Chennai transferring him to Thayilpatti Branch, Tuticorin Region. Reason stated for transfer was request of petitioner. His immediate representation submitted not to transfer him for no request from him was favoured and he was allowed to continue. As per order dated 04-12-2009 of the Senior Manager of the Branch he was relieved. Still he was allowed to continue in the same Branch till 16-12-2009 on which day he was given Suspension Order by the Chief Regional Manager, Disciplinary Authority (DA) which he challenged in a writ before Madurai Bench of the Madras High Court. He also submitted representations dated 2-01-2010 and 10-03-2010 for revoking suspension made for no misconduct committed or for no reasons to his awareness. Charge Sheet dated 21-04-2010 of the Senior Manager, IOB, Chennai was served on him alleging him to have had (a)

caused damage to the property of the Bank (b) to have had acted prejudicial to the interests of the Bank and (c) to have had disobeyed the lawful and reasonable order of the superior of the Branch. He denied the charges in his explanation on 19-05-2010, not accepting which an enquiry was directed on 21-06-2010 examining two witnesses on the Respondent's side. The witnesses accepted that the total amount of the instruments sent for clearance was Rs. 2,260 and Rs. 1,765 totaling to Rs. 4,025 only. Covering letter sent to PCC Bank on 11-12-2009 was also marked as exhibit on the petitioner's side to prove his innocence. Both witnesses did not state any damage to have been caused to the Bank's property. Second witness stated the petitioner to have had used un-parliamentary words in the business hall premises in front of customers but nothing was established in the enquiry. No customer was examined. No other staff of the Branch was examined. Enquiry Officer without considering petitioner's written brief properly concluded the charges to have been proved. Further representation to the enquiry report was also not properly considered. After personnel hearing proposing punishment of Compulsory Retirement, he was awarded Compulsory Retirement punishment from service on 23-10-2010. Appeal before the General Manager, Chennai filed on 11-11-2010 was rejected on 8-02-2011 after personal hearing but without considering the points raised by him. ID raised having ended in a failure report dated 26-11-2011, with delay due to poverty to approach the Court immediately the petition is filed now for claim for reinstatement with full back wages and other attendant benefits.

4. Counter Statement averments briefly read as follows :

Petitioner was compulsorily retired on punishment for misappropriating the Bank's amount after departmental proceedings. He had been suspended on 15-12-2009. He was charge sheeted by Disciplinary Authority as per order dated 21-04-2010. He worked in Avudayaroil Branch till his suspension on 15-12-2009. There is no merit in his contentions about his transfers and relieving orders. Charge Sheet relates to his misconduct and not about his joining in the other Branch. The charge is that on 11-12-2009 two instruments to Pudukottai District Central Cooperative Bank Ltd. (PDCCB) for local collection had been sent through him. The petitioner entered the amount of the first instrument in the name of SFC, Manamalkudi No. 132522 dated 19-12-2009 as Rs. 2,260 instead of Rs. 2,660, the other instrument in the name of Sub-Registrar Office with No. 132509 dated 8-12-2009 being for Rs. 1,765. However he collected Rs. 4,425 on 11-12-2009 from the PDCCB Ltd. but remitted only Rs. 4,025 into the Sundry Creditor's Account and kept to himself Rs. 400. Petitioner on enquiry informed his having received only Rs. 4,025. But PDCCB Ltd. confirmed to the Bank the actual payment of Rs. 4,425. Then the Manager 2nd line of the Branch advised him to remit the difference amount of Rs. 400 which he disobeyed

and picked up quarrel in front of the customers. After much persuasion he remitted Rs. 400 under a separate voucher. Thus he on 11-12-2009 dishonestly and fraudulently misappropriated Rs. 400 and he quarreled with the 2nd line Manager in front of the customers instead of remitting the amount. The petitioner simply denied the charges. Enquiry was held with Disciplinary Authority as Enquiry Officer as enabled under the Memorandum of Settlement on 21-06-2010. Petitioner had been given opportunity to inspect the documents. Management exhibits from 1 to 8 were marked and two witnesses were examined. On petitioner's side one document was marked with no witness on his side. Charges were proved by the enquiry report. In the enquiry petitioner accepted all the charges knowing the consequences unconditionally. He denied the misconduct having committed. He contended that he had not counted the cash given by PDCCB Ltd. Here though that PDCCB Ltd. Had given excess amount of Rs. 400 as the total amount of the instruments was mentioned as Rs. 4,025 (short by Rs. 400) in both local cheques collection register and covering letter. There is no merit in the said contention. Without counting the cash he would not have come to know that PDCCB Ltd. had given excess cash of Rs. 400 When he received the excess cash from PDCCB Ltd. He should have returned the same to them or report the same to the Branch Manager. Instead he misappropriated the amount. It is clear that he had received the actual amount of the instruments from PDCCB Ltd. from the evidence. It is also evident that he remitted only the amounts mentioned in the local cheques collection register and covering letter and misappropriated Rs. 400 being the difference between the amount received and that written in the covering letter. It is in evidence that he quarreled with the 2nd line Manager in front of the customers and that with much persuasion only he remitted the amount. If petitioner had obeyed and remitted the amount there would not have any necessity for the Manager 2nd line to enquire about the amount paid by PDCCB Ltd. to the petitioner. Petitioner committed misconduct under Clause- 56(d) of the Memorandum of Settlement dated 10.04.2002 and 5(d) and 5(e). The acts are prejudicial to the interests of the Bank under Clause-5j). After the legal formalities and the petitioner's attendance for the personal hearing on 23-10-2010 where he requested not to impose compulsory retirement; he was awarded compulsory retirement, the proved charges being serious treating the suspension as not duty. Appeal was dismissed on 8-02-2011. Bank lost confidence on him. Supreme Court has held that even if the misappropriated money may be small or temporary Bank employee holding position of trust cannot be retained in service. No sympathy is called for. No loss suffered by the Bank is not a defence to the punishment. The punishment is only to be upheld.

5. Points for consideration are:

- (i) Whether the punishment of Compulsory Retirement imposed on the petitioner is legal and justified?

(ii) To what relief the concerned petitioner is entitled?

6. Evidence consists of the testimony of WW1 and Ex.W1 to Ex.W19 on the petitioner's side and the testimony of MW1 and Ex.M1 to Ex. M24 (subject to objection that Ex.M1, Ex.M5 to Ex. M8 and Ex.M13 to Ex. M24 are not proved through a competent witness) on the Respondent's side.

Points (i) & (ii)

7. Heard both sides. Perused the records, pleadings, documents, evidence and written arguments on either side. Both sides keenly argued by way of written arguments in terms of their respective case. The substance of the arguments on behalf of the petitioner is that the petitioner had not been furnished with statement of witnesses or documents relied on in the enquiry. Copy of the investigation report was not furnished to him. Punishment is too harsh. Another delinquent who misappropriated a sum of Rs. 5,000 was given a minor punishment of reduction in Basic Pay by two stages as evidenced from Ex.W19. Thus he has been meted with discriminatory treatment. He has had put in 20 years of unblemished service. Findings are perverse. Petitioner has been made a scapegoat on account of his refusal to do personal work of the Manager and also due to a complaint filed by him, pointing out the irregularities committed in the Bank. There is no material evidence to prove the charge. Setting aside the punishment he is to be reinstated into service.

8. Contra arguments are that in the enquiry the petitioner accepted the charges voluntarily to the effect that his retaining of Rs. 400- was not intentional, that he had thought that PDCCB had made excess cash of Rs. 400. He has had no intention to misappropriate money. His stand of having had not counted the cash by himself is not true because without counting he would not have come to know regarding payment of the excess cash, which he should have returned to the Bank. That he did not quarrel with the Manager is also not disproved as against the oral and documentary evidence adduced in the enquiry. He remitted Rs. 400 only with much persuasion. Thus the charges could be found proved and petitioner is proved to be guilty of the charges which are prejudicial to the interests of the Bank. The Bank lost confidence on him. He does not deserve to be reinstated. Charges are very serious and punishment is not to be interfered with in extension of any sympathy. No loss suffered by the Bank is not a defence.

9. After having perused the relevant records, including the enquiry proceedings, report and the documents, I am led to the conclusion that petitioner is proved guilty of the charges. There is necessary evidence to support the charges against him. It is not a case of want of adequate evidence and of only some legal evidence to arrive at the conclusion reached by the Enquiry Officer as

to his guilt. Therefore there is nothing wrong with the finding that the petitioner is guilty of the misconduct. The point is answered in favour of the Respondent.

10. Coming to the punishment the question is whether it is discriminatory and disproportionate to the gravity of the misconduct. While it is not to be doubted that the punishment is not disproportionate to the gravity of the misconduct, yet on another view of the matter it sounds discriminatory. As pointed out by the petitioner as well as proved from Ex.W19 Order dated 12-06-2004 of the Dy. General Manager, IOB, Central Office, Chennai by punishing a similar delinquent, who misappropriated a sum of Rs. 39,868 what the punishment imposed was bringing down his Basic Pay by two stages in the scale of pay in terms of Clause-6(e) of the Memorandum of Settlement dated 10.04.2002. Taking into consideration this punishment which is not controverted by the Bank, the punishment awarded on the petitioner sounds unjust, is arbitrary and against the principles of natural justice. Though a possible contention can be that in the matter of delinquency one is not to be treated equal with another delinquent, fairness in action of punishment demands that the delinquent on hand is not awarded a punishment which was not awarded to a similar delinquent. In fact the amount misappropriated by the delinquent in the other case, was much larger than a sundry sum of Rs. 400 misappropriated in this case. Therefore the punishment imposed on the petitioner is unjust, unfair and arbitrary and is disproportionate to the gravity of the misconduct, as viewed in the context of the misconduct committed by the other delinquent. The case of the Management that it has lost confidence on the workman/petitioner for the misconduct is too "unrealistic an assessment to send him out of employment for that reason. The present act of misappropriation of Rs. 400 which amounts to a stray and single lapse from virtue, which the petitioner has committed might be due to his compelling tragic situations obtaining in his family set-up. Of course, whatever be the hard hit and distressing circumstances the petitioner must not have done it. Still I find a whisper in his pleadings that the reason for the delayed filing of the dispute is poverty obtaining in his family. That fact does not stand controverted by the Respondent. There need not be any hesitation to believe that what the petitioner stated is an utter falsehood. This though may not be persuading circumstances in his favour still, in the circumstances I am of the considered view that a lenient view has to be taken in the matter of his punishment. It is nobody's case that he has not had any unblemished record of past service. He has already put in un-denied service of nearly 20 years. Another opportunity has to be given to him to mend himself and prove himself to be an honest employee. The misappropriation by him of the sundry sum of Rs. 400 by him, while cannot be reckoned as short of any serious misappropriation still this is a very

apt and proper case for imposing a lesser punishment. So viewed the compulsory retirement is set aside. The petitioner is ordered to be reinstated into service forthwith with continuity of service and all other attendant benefit but with backwages limited to 30%. Let the remainder 70% of the backwages be forfeited by him for the committed misconduct.

13. The industrial dispute is answered as above.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th November, 2012)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/ : WW1, Sri M. Rajagopal
Petitioner

For the 2nd Party/ : MW1, Sri S. N. Sritharan
Management

Documents Marked :- On the petitioner's side

Ex. No.	Date	Description
Ex.W1	25-11-2009	IOB PAD 178/CL(SVB-2009-10 date transfer order)
Ex.W2	04-12-2009	IOB A.V. Kovil branch relieved letter
Ex.W3	15-12-2009	IOB RO per/66/2009 date suspension order
Ex.W4	21-04-2010	Charge Sheet issued to the workman
Ex.W5	19-05-2010	Reply submitted by the workman
Ex.W6	22-05-2010	Disciplinary Authority ordering enquiry
Ex.W7	21-06-2010	Enquiry Proceeding
Ex.W8	—	Folio 123 local cheque collection register of Avudayar Koil Branch
Ex.W9	11-12-2009	Copy of the covering letter dates sent to pudukkottai District Central Co-operative Bank Ltd.
Ex.W10	26-07-2010	Presenting Officer's brief forwarded to workman
Ex.W11	11-08-2010	Written brief submitted by the workman
Ex.W12	09-09-2010	Findings forwarded to the workman
Ex.W13	21-09-2010	Reply to the findings submitted by the workman
Ex.W14	30-09-2010	Notice regarding personal hearing given to the Workman

Ex.W15	23-10-2010	Proceedings of personal hearing
Ex.W16	23-10-2010	Order passed by the Disciplinary Authority
Ex.W17	08-02-2011	Appellate Order passed by the Appellate Authority
Ex.W18	26-07-2011	Forwarding of failure report to the Ministry by Asstt. Labour Commissioner (Chennai)-II, Chennai

On the Manaagement's side

Ex. No.	Date	Description
Ex.M1	15-12-2009	Suspension Order issued to the workman
Ex.M2	21-04-2010	Charge Sheet issued to the workman
Ex.M3	19-05-2010	Reply submitted by the workman
Ex.M4	22-05-2010	Disciplinary Authority ordering enquiry
Ex.M5	21-06-2010	Enquiry Proceeding
Ex.M6	26-07-2010	Presenting Officer's brief forwarded to workman
Ex.M7	11-08-2010	Written brief submitted by the workman
Ex.M8	09-09-2010	Findings forwarded to the workman
Ex.M9	21-09-2010	Reply to the findings submitted by the workman
Ex.M10	30-09-2010	Notice regarding personal hearing given to the workman
Ex.M11	23-10-2010	Proceedings of personal hearing
Ex.M12	23-10-2010	Order passed by the Disciplinary Authority
Ex.M13	11-11-2010	Appellate preferred by the workman
Ex.M14	02-12-2010	Appellate Authority's notice to workman to appear for the personal hearing
Ex.M15	07-11-2011	Proceedings of the personal hearing
Ex.M16	08-02-2011	Appellate order passed by the appellate Authority
Ex.M17	ME 1	Attendance of the workman

Ex.M18 ME 2	Folio 132 of local cheque collection register of Avudayar Koil Branch
Ex.M19 ME 3	Credit Cash Voucher dated 11-12-2009 for Rs. 4,025/- relating to Sundry Creditor (LC STO Manamelkudi)
Ex.M20 ME 4	Credit Cash Voucher dated 11-12-2009 for Rs. 400 relating to Sundry Creditor
Ex.M21 ME 5	Copy of Branch letter dated 11-12-2009 addressed to the Chief Manager, PAD Section, Regional Office, Karaikudi
Ex.M22 ME 6	Letter dated 17-12-2009 from Pudukkottai District Co-operative Bank Ltd. dated 17-12-2009 addressed to Branch Manager, IOB, Avudayar Koil
Ex.M23 ME 7	Log Transaction for 11-12-2009
Ex.M24 ME 8	Investigation report dated 23-02-2009 with enclosures submitted by Sri P.L. Vairavan to Chief Regional Manager, Regional Office, Karaikudi with summary of Investigating and Annexure A to E.

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 72.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 125/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2010 को प्राप्त हुआ था।

[सं. एल-12012/164/2003-आई आर (बी-II)
शीश राम, अनुभाग अधिकारी

New Delhi, the 17 December, 2012

S.O. 72.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 125/03) of the Central Government Industrial Tribunal/Labour Court I, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 14-12-2012.

[No. L-12012/164/2003-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1
DHANBAD

In the matter of a reference U/S. 10 (1)(D) (2A)
of I.D. Act.

Reference No. 125 of 2003.

Parties : Employers in relating to the management of Bank of Maharashtra

AND

Their Workmen.

Present : Shri H. M. Singh, Presiding Officer.

Appearances :

For the Employers : Shri Kumar Sourabh,
Br. Manager.

For the Workman : Shri N. N. Choudhary,
Authorised Representative.

State : Bihar. Industry : Bank.

Dated, the 20th June, 2012.

AWARD

By Order No. L-12012/164/2003-IR (B-II) dated 27-11-2003 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the Bank of Maharashtra to impose the punishment of compulsory retirement from service on Shri S. K. Das vide order dated 17-3-1997 is legal and justified ? If not, what relief the workman is entitled to?”

2. The case of the concerned workman is that he was initially appointed as permanent Clerk-cum-godown keeper in the service of the Bank and posted at branch office, Patna on 5-1-1981. His service condition had been governed by the Bipartite Settlement 1966. Vide order dated 14-5-1996 he had been placed under suspension for embezzlement of Rs. 5000 in SB A/C No. 2325 on 30-4-1996. Thereafter a Chargesheet had been served upon him on 11-11-1996 as under —

(1) Accepting the cash and pay-in-slip from Ram Lakhan Singh for Rs. 5000 on 30-4-1996 for credit to SB A/C No. 2325 of Sri Vijay Kumar without ascertaining that the receipt was not recorded in the manager's scroll nor directed the customer to get the receipt scrolled as per

procedure which is a minor misconduct under Clause 19.7(c) of Bipartite Settlement.

(2) Handing over the receipted counterfoil of the pay-in-slip to the customer without scrolling the receipt in the cashier's receipt scroll and not releasing the voucher for posting to the respective account, thus violated the Bank's procedure which is a minor misconduct under Clause 19.7(d) of Bipartite Settlement.

(3) Talled the cash on 30-4-1996 without taking into account the receipt of Rs. 5000 and kept the money and the voucher which is a major misconduct under clause 19.5(j) of Bipartite Settlement.

(4) Carried the property of the bank outside the bank's premises without authorisation which is a major misconduct as per Clause 19.5(d) of the Bipartite Settlement.

The Asstt. General Manager, Regional Office, Calcutta appointed Sri M. K. Rathore, Br. Manager, as Enquiry Officer to conduct departmental enquiry into the charges vide order dated 11-11-1996. Neither enquiry was conducted by the Enquiry Officer nor any proceeding was maintained by the Enquiry Officer. The Enquiry Officer did not examine Bank's witnesses in presence of the workman. The concerned workman was not given opportunity to nominate defence representative. Neither the Disciplinary Authority nor the Enquiry Officer supplied copies of a statement of bank's witness if any recorded in absence of the workman. The Enquiry Officer did not examine Ram Lakhan Singh in presence of workman. As per procedure of enquiry the enquiry officer is required to take signature of the workman and his defence representative on proceeding pages of the enquiry. The Disciplinary Authority did not supply the copy of the enquiry.

It is submitted that Charge No. 1 framed under Clause 19.7(d) of B. P. Settlement for not directing the customer to get the receipt scrolled in the manager's scroll nor pointing out this to the concerned official can not be maintained against the workman because it was the duty of Ram Lakhan Singh to get the same scrolled and it was duty of the concerned official to check unscrolled receipt voucher. On the part of the workman it was slip of his eye on account of huge pressure of work on 30-4-94 on account of closure of bank on 28-4-1996 and 29-4-96 being Sunday and holiday for Bakrid respectively. 2ndly the branch manager tagged and entrusted the payment work to the workman also because payment clerk was on leave on 30-4-1996.

As regards Charge No. 2 it is submitted that under Clause No. 19.7(d) of B. P. Settlement for handing over the receipted counterfoil of the pay-in-slip to the customer without entering the receipt in the Cashier's Receipt Scroll and not to release the voucher for posting to the respective account, is not maintainable. It is submitted that Charge

No. 3 does not speak the A/c No. and the name of the A/c Holder and receipt of Rs. 5000 in which A/C which was not taken into account at the time of tallying the cash on 30-4-1996. The Cashier receipt Scroll dated 30-4-1996 shows several receipt of Rs. 5000 which were taken into account on 30-4-1996 while cash was tallied. Similarly Charge No. 3 does not speak the A/c No. and the name of the A/c holder and the name of the A/c holder and receipt of Rs. 5000 in which A/c which was not taken into account at the time of tallying the cash on 30-4-1996. The cash for receipt Scroll dt. 30-4-1996 shows several receipt of Rs. 5000 cash which were taken into account on 30-4-1996 while cash was tallied. Similarly Charge No. 3 does not speak and give the A/c No. and the name of A/c holder on the voucher which is alleged to have been kept by the workman on 30-04-1996 with Rs. 5000. Therefore, the Charge No. 3 is vague and indefinite and can not be proved and maintained under Clause 19.5(j) of the Bipartite Settlement. While framing Charge No. 4 the Disciplinary Authority ignored and escaped the truth and circumstances that 1-5-96 was closed day, on 2-5-96 branch was opened partially, 3-5-96 was closed for Purnima holiday and 4-5-96 branch was opened. It is submitted that Charge No. 4 framed under Clause 19.5(d) of the B. P.S. for Major Misconduct is not maintainable and sustainable. The Charge Nos. 1, 2, 3 and 4 are false, arbitrary, malafide which is evident from the documents of the branch.

In such circumstances it has been prayed that the Hon'ble Tribunal be pleased to pass an award in favour of the workman after setting aside the malafide order of suspension dt. 14-5-96, order of punishment dt. 17-3-97, 2nd show cause notice dt. 28-2-97 and the order passed in appeal dt. 11-11-97 and administrative order dt. 10-4-97 and direct the management to reinstate the concerned workman in service of the Bank with full back wages.

3. The case of the management is that on 30-4-1996 the concerned workman while working in Cash Deptt. at Patna Branch received an amount of Rs. 5000 from one of depositors of the Bank alongwith pay-in-slip for the credit of his SB A/c. Mr. Das received the said cash without observing the Bank's rule of getting the pay-in-slip scrolled with the Officer-in-Charge. He handed over the duly acknowledged receipt/counterfoil of the said pay-in-slip to the depositor but did not account for the said cash of Rs. 5000 in Cashier's Scroll on 30-4-1996. The depositor called on the Branch Manager on 4th May, 1996 to update his passbook and expressed shock as the amount of Rs. 5000 having not been credited to his account and produced the counterfoil duly bearing the Cashier's Receipt Stamp and the signature of Receiving Cashier, Sri S. K. Das in proof of having remitted the amount. On 4-5-1996, on enquiry, the concerned workman confessed before the Branch Manager, Patna and other staff members that he

had received the said amount of Rs. 5000 and had taken it to home alongwith the relevant pay-in-slip. On being advised to make the amount good Shri Das immediately rushed out of the branch and brought Rs. 5000 and the pay-in-slip after in hour. He deposited the said amount for the credit of customer's account after duly scrolling it with the Scrolling Officer. The said act of the concerned workman constitutes a gross/major misconduct having done misappropriation of cash deposited by the customer at the Cash Counter. The act of the concerned workman involves moral-turpitude. Due to the said act of the concerned workman, the Bank lost trust/faith on him. On getting explanation from him he was put under suspension, vide order dt. 14-5-1996. The chargesheet was issued to the concerned for making him liable for breach of rules of the business of the Bank, for doing any act prejudicial to interest of the Bank, involving or likely to involve the Bank in serious loss and wilful damage or attempt to cause damage to the property of the Bank or any of its customer. For his act of misconduct a departmental enquiry was conducted against the concerned workman and every opportunity of defending his action was given to him. The principles of natural justice were observed during the course of enquiry. A copy of the findings of the Enquiry Officer was also made available to him. After taking into consideration the findings of the Enquiry Officer the Disciplinary Authority awarded the punishment of compulsory retirement from the services of the Bank. Against that decision the concerned workman filed appeal before the Appellate Authority. The Appellate Authority on going through the findings record and other documents came to the conclusion that the punishment awarded by the Disciplinary Authority was well commensurate with the gravity of the misconducts committed by the disputant and hence he confirmed the same. Accordingly appropriate punishment was imposed on the concerned workman.

In rejoinder to the written statement of the workman, the management admitted some paragraphs and denied some paragraphs of the written statement of the workman.

4. The workman has filed rejoinder to the written statement of the management in which it has been stated almost same facts as have been stated in his written statement.

5. The enquiry was held to be not fair and proper vide order dated 25.5.2012.

After that the management produced MW-2, Paresh Prasad Sharma. The management produced documents which have been marked as Exts. M-1 series, M-2 Series and Ext. M-3.

The workman concerned produced document marked as Ext. W-1.

6. Main argument advanced on behalf of the concerned workman is that the Bank has imposed Compulsory Retirement from 17-3-97 is void and arbitrary because the chargesheet dated 11-11-96 and enquiry report dated 24-12-96 and punishment order dated 17-3-97 and order passed in appeal dated 11-11-97 are bad in law, arbitrary and not maintainable and not sustainable.

Another argument advanced on behalf of the concerned workman is that the management failed to support the case for fraud made by the workman. The management did not served the enquiry report upon the concerned workman and notice of enquiry was not given to the workman.

It shows that no enquiry was conducted by the Disciplinary Authority. The Disciplinary created 4 charges from a single fact and punished the workman for 4 charges which is not permissible as per law laid down by Hon'ble Patna High Court reported in 1990(1) B.L.J.R. Patna H.C. (DB) 567 and 2007 (115) FLR-225-Calcutta High Court, Division Bench. It has been argued that the Charge No. 4 under clause 19.5 of the B.P. Settlement involving prejudicial to the interest of Bank in serious loss and punishment of 'compulsory retirement' imposed upon the concerned workman cannot be sustainable because none of the property of the Bank has been damaged as it has been alleged in Ext. M-3 under clause 19.5 is not maintainable and sustainable because the depositor of the amount has not been examined. Moreover, the management's witness has not supported the management's case itself.

It has been argued that it is the duty of customer and depositor to get entered in the passbook the amount deposited in the bank which has not been done.

Regarding Charge No.3 it has been stated that the depositor deposited Rs. 2500 only on 30-4-96 as shown in Ext. M-3 and went away to bring remaining amount Rs. 2500 as such the pay in slip of Rs. 5000 alongwith pay in slip was kept with him because Bank was closed on 1-5-96 as it has been admitted in written statement of the management. He had deposited the same in the Bank on 4-5-96. The Bank has examined Enquiry Officer, Suresh Kumar Sharma, who has stated in cross-examination that I cannot say whether second show cause notice was given to the concerned workman before passing final order of dismissal. I have not gone through the enquiry report. When the second show cause notice was not sent to the workman, it is mandatory upon the management to send to the delinquent employee before passing final order and if it has not been done it is not good and the employee is entitled to know it. The order passed by the management on 17-3-97 shows that he has been two punishments, (i) 'warning' and (ii) Compulsory Retirement and he is not entitled to any relief except suspension allowance.

Non-examination of the customer shows that the management's action was malafide for taking action against the concerned. The chargesheet to the workman was for receipt of Rs. 5000 on 30-4-96 from Ram Lakhan Singh to deposit the same in saving bank A/c No. 2325 of Vijay Kumar which was not deposited on 30-4-96 or accounted for in the books of the bank on 30-4-96. It shown that Ram Lakhan Singh deposited Rs. 2500 on 4-5-96, because the management has not examined Ram Lakhan Singh.

7. Considering the above facts and circumstance, I hold that the action of the management of Bank of Maharashtra to impose the punishment of compulsory retirement from service on Shri S.K. Das vide order dated 17-3-1997 is not legal and justified.

The concerned workman is entitled to be reinstated in the service of the bank w.e.f. 14-5-1996 with 50% back wages. The management is directed to implement the award within two months from the date of publication of the award in the Gazette of India.

This is my Award.

H.M. SINGH, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 73.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, मुम्बई के पंचाट (संदर्भ सं. सीजीआईटी-1/11 ऑफ 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-12012/188/2003-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th December, 2012

S.O. 73.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-1/11 of 2004) of the Central Government Industrial Tribunal-cum-Labour Court-1, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman. which was received by the Central Government on 14-12-2012.

[No. L-12012/188/2003-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE-I

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 1,

MUMBAI

Justice G. S. SARRAF : Presiding Officer

Reference No. CGIT-1/11 of 2004

Parties : Employers in relation to the management of
Bank of India

And

Their Workman (M.F.Barot)

Appearances :

For the Management : Mr.. Lancy D'Souza,
Management Representative

For the Workman : Mr. Peerzada, Adv.

State : Maharashtra

Mumbai, dated the 12th day of December 2011

AWARD PART-I

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of Bank of India, Mumbai in dismissing the services of Mr. M.F. Barot w.e.f. 15-6-2002 is legal and justified? If not, what relief is the workman entitled to?

According to the statement of claim the second party workman joined the services of the first party w.e.f. 9-11-1974 as sub-staff. The second party workman was posted as cash-cum-accounts clerk at Bhayander branch on 11-2-1997. The second party workman was later on designated as Acting Chief Cashier in charge of the said branch from 21-4-2001. The second party workman put in 28 years of long and loyal service with the first party. The service conditions of the workmen working with the first party are governed by the terms of settlement entered into between the union and the first party from time to time. The service conditions are also governed by the bi-partite settlement dt.19-10-1966 so far as it relates to the disciplinary matters. On 13-5-2002 at the closing hours of the bank while balancing the cash after amalgamation the second party workman found shortage of cash of Rs.10,000. The second party workman reported this fact to his superiors. The superiors, namely, M.B.Kakad and H.P.Ahire succeeded in making the second party workman write that he would make good the alleged shortage by putting him under psychological fear knowing fully well that he was innocent and had nothing to do with alleged shortage of Rs.1,54,800. On physical verification of cash it was found that the total cash was short by 1,54,800 including the cash shortage of Rs.10,000 reported by the second party. On 14-5-2002 one Karkera posted in the place of the second party workman reported a shortage of Rs. 4,500 as one packet of Rs. 500 denomination prepared under the initials of the second party workman was containing only 91 notes

as against 100 and therefore, there was a total shortage of cash of Rs. 1,59,300. The second party deposited the aforesaid amount. In spite of this the first party proceeded to initiate disciplinary action against the second party. The second party was suspended on 14-5-2002. A memorandum dt. 30-5-2002 was issued. The first party thereafter created a show of conducting an enquiry by keeping a preliminary hearing on 3-6-2002 at 11.00 a.m. Since the second party workman could not reach in time the Enquiry Officer adjourned the hearing till 12.30 p.m. The second party workman reported at the venue of the hearing at 12.00 noon. When the enquiry proceedings started at 12.50 pm the second party workman submitted a letter dt. 3-6-2002 in english denying the charges levelled against him to the Enquiry Officer in the presence of Presenting Officer Samy Thomas and Steno, Kishore Kulkarni. The Enquiry Officer failed to take the above letter on record. The Enquiry Officer took upon himself the task of prosecutor and went on forcing and pressurising the, second party workman to write in Hindi what was dictated by the Enquiry Officer. The second party workman hoped that as assured by the Enquiry Officer the disciplinary action would be dropped and no action would be taken against him. The second party workman approached the Inspector of Police, Mira-Bhayander Police Station and Inspector of Police, CBD-Belapur, Navi Mumbai and filed complaints on 11-6-2002. According to the statement of claim the action of the first party is nothing but a criminal conspiracy hatched against the second party workman in its attempt to make the second party workman a scape goat to cover up misdeeds of his superiors and divert the attention of the big bosses in particular and the public in general. According to the statement of claim the Enquiry Officer did not conduct enquiry after 3-6-2002 and on the basis of false record created by him submitted his report on 4-6-2002. It has also been stated in the statement of claim that there is no allegation against the second party workman that he misappropriated or siphoned Rs. 1,59,300 and that no financial loss was caused to the first party as the amount found short was deposited by him. The second party workman by letter dt. 13-6-2002 denied the charges levelled against him. The First Party, however, ignored this letter and imposed the punishment of dismissal. The second party workman preferred an appeal but the Appellate Authority rejected the appeal without taking into consideration genuine grievances of the second party workman. According to the statement of claim the charge sheet was vague and confusing and Enquiry Officer violated principles of natural justice and the findings recorded by the Enquiry Officer are perverse. The second party has, therefore, prayed that he be reinstated in the service with revised full back wages and continuity of service and all consequential benefits w.e.f. 15-6-2002.

According to the written statement filed by the first party on 4-4-2002 physical verification of the cash was

carried out and the cash was found intact. On 13-5-2002 at the closing of working hours of the bank while balancing the cash after amalgamation it was reported by the workman that cash was short by Rs. 10,000. The reported difference could not be located in the cash transactions undertaken by the branch on the same day. In view of the above physical verification of the entire cash and the safe was carried out. The workman, however, showed his reluctance for physical verification and showed his willingness to make loss good by paying Rs. 10,000. Ultimately physical verification was carried out despite the workman's resistance and it was observed that the fourteen bundles of Rs. 100 denominations were containing only 9 packets instead of ten packets. Similarly one bundle of Rs. 50 denomination was short by one packet. There was also excess of Rs. 200 in the cash kept in coin form. Thus on physical verification of the cash it was found that the total cash was short by Rs. 1,54,800 including the cash shortage of Rs. 10,000 reported by the workman. On 14-5-2002 one Karkera, Cash Clerk posted in the branch was given the charge of Cashier in charge on temporary basis since the workman did not report for duty on that day. Karkera reported shortage of cash of Rs. 4,500 as one packet of Rs. 500 denomination notes prepared under the workman's initials was containing only 90 pieces as against 100. Thus the total shortage came to Rs. 1,59,300. By letter dt. 13-5-2002 addressed to the Chief Manager, Bank of India, Bhayander Branch the workman acknowledged the shortage of cash allocated on that day. The workman also expressed his willingness to make the loss good and accordingly on 22-5-2002 the workman deposited cheque of Rs. 1,60,000 drawn on Central Bank of India in his SB A/c No. 33980 with the branch and simultaneously tendered withdrawal slip dt. 22-5-2002 for Rs. 1,59,300 with the instructions on the reverse of the withdrawal slip to debit his account towards the cash shortage. On realisation of the cheque Rs. 1,59,300 were debited to the workman's SB Account No. 33980 as per his instructions and the loss was recovered. The workman was therefore, charged for the aforesaid misconduct under clause 19.5(j) of bipartite settlement dt. 19-10-1966. It was also mentioned in the memorandum dt. 30-5-2002 that R.S. Budhiyal, Manager, Tambe Nagar Branch was appointed Enquiry Officer as per clause 19.12 of the bipartite settlement dt. 19-10-1966 to enquire into the charges of misconduct levelled against the workman. The Enquiry Officer vide his letter dt. 31-5-2002 informed the workman to appear on 3-6-2002 the venue mentioned in the letter. On 3-6-2002 the workman appeared for the enquiry and during the course of enquiry submitted a letter dt. 3-6-2002 in Hindi in which he conveyed his unconditional acceptance of the charges and allegations levelled against him. The workman also pleaded guilty orally of the charges and accepted the charges during the enquiry proceedings and also stated

that he did not want to bring any defence representative to defend his case as he had admitted the charges. The Presenting Officer of the bank produced documentary evidence and a list of witnesses which were taken on record. The Enquiry Officer after considering the unconditional admission of the charges by the workman, the documents submitted by the Presenting Officer and confirmation of the documents by the workman concluded the enquiry. The workman was informed to submit his written brief but he declined to do so. The bank thus gave fair and full opportunity to the workman to refute the charges of misconduct levelled against him. The Enquiry Officer concluded that the workman defrauded the bank by misappropriating an amount of Rs. 1,59,300 from the cash safe during the period from 4.4.2002 to 13.5.2002. The Disciplinary Authority after perusing the proceedings of the enquiry and the report of the Enquiry Officer concurred with the findings of the Enquiry Officer. The Disciplinary Authority, therefore, vide its show cause punishment notice dt. 4.6.2002 forwarded the report of the enquiry to the workman and informed him about his concurrence with the report of the Enquiry Officer and also informed the workman as to why the proposed punishment of dismissal without notice in terms of clause 21 (iv)(a) of the bipartite settlement dt. 14-2-1995 should not be imposed against him. The Disciplinary Authority also stated in the show cause notice that the workman was being provided an opportunity of personal hearing on 8.6.2002. The workman after receiving the show cause notice submitted a letter dt. 6-6-2002 through his wife to the Disciplinary Authority requesting for 8 days time for submission of his explanation. The aforesaid request was granted by the Disciplinary Authority vide his letter dt. 6-6-2002 on compassionate grounds. The workman was, therefore, given one more opportunity to present himself for the personal hearing on 14-6-2002. The workman presented himself before the Disciplinary Authority on 14-6-2002 and submitted a letter. The Disciplinary Authority, however, observed that the report of the Enquiry Officer was based on material on record and the workman was given full opportunity to defend himself during the course of enquiry. The Disciplinary Authority was, therefore, of the view that ends of justice would be met if the workman was dismissed from service and, therefore, on 15-6-2002 passed an order of punishment of dismissal without notice in terms of clause 21(a) of the bipartite settlement dt. 14-2-1995. It was also mentioned in the order that the workman was not entitled to any benefits for the suspension period except the subsistence allowance paid to him for the period from 14-5-2002 to 14-6-2002. Aggrieved by the aforesaid order the workman preferred an appeal which was dismissed by order dt. 30-9-2002. According to the written statement the workman never submitted any letter dt. 3-6-2002 in English denying the charges levelled against him before the Enquiry Officer. On the other hand he submitted a letter dt. 31-6-2002 written in Hindi in which he clearly

conveyed his unconditional acceptance of the allegations levelled against him. It has been stated in the written statement that the complaints lodged by the workman before the police authorities on 11.6.2002 are false with a view to wriggle out the admission voluntarily made by him. The first party has denied that the workman was pressurised and compelled by his superiors to make good the deficit of money. It has been stated in the written statement that fair and reasonable opportunity was given to the workman to defend his case. According to the written statement the punishment of dismissal without notice imposed on the workman is legal and justified and the workman is not entitled to any relief.

Following issues were framed.

- (i) Whether the enquiry held against the second party workman is not fair and proper?
- (ii) Whether the findings of the Enquiry Officer perverse?
- (iii) Whether the action of the management of Bank of India, Mumbai in dismissing M.F. Barot w.e.f. 15.6.2002 is not legal and justified?
- (iv) Whether the punishment awarded to the second party?

According to the ordersheet dt. 19.10.2011 issues nos. 1 and 2 are preliminary in nature and therefore, these two issues will be decided first.

The workman has filed his own affidavit as well as of his wife Nirmala Maganbhai Barot who have been cross-examined by learned counsel for the first party. The first party has filed affidavit of Enquiry Officer R.S. Budhiyal who has been cross-examined by learned counsel for the second party workman.

Heard learned counsels for the parties.

ISSUES NOS. 1 and 2:

On 13.5.2002 on physical verification of the cash it was found that the total cash was short by Rs. 1,54,800. On 13.5.2002 itself the workman wrote a letter to Chief Manager, Bank of India, Bhayander Branch and acknowledged the shortage of cash located on that day and expressed his willingness to make the loss good. The above fact is admitted by the workman in his statement of claim. On 14-5-2002 one Karkera cash clerk posted in the branch was given the charge of cashier in-charge on temporary basis since the workman did not report for duty on that day and the former further reported, shortage of cash of Rs. 4,500. Thus, the total shortage crystallized to Rs. 1,59,300. On 22-5-2002 the workman deposited a cheque of Rs. 1,60,000 and on realisation of the cheque the amount of Rs. 1,59,300 was debited to his SB Account no. 33980 as per his instructions and the loss was recovered. A charge sheet

was issued to the workman on 30.5.2002. The disciplinary Authority appointed R.S. Budyal as Enquiry Officer. The Enquiry Officer vide his letter dt. 31.5.2002 informed the workman to appear on 3.6.2002 at the venue mentioned in the letter. On 3-6-2002 the workman appeared before the Enquiry Officer and submitted a letter Ex. M-7 wherein he conveyed his unconditional acceptance of the charges and allegations levelled against him in the charge sheet. It is clear from the minutes of the enquiry Ex. M-6 that the workman pleaded guilty orally also of the charges and accepted the charges and also stated that he did not want to bring any defence representative to defend his case. The Enquiry Officer after considering the unconditional admission of the charges of the workman and the documents submitted by the Presenting Officer decided to conclude the proceedings. The workman was also informed to submit his written brief but he declined to do so and informed the Enquiry Officer to treat his letter dt. 3-6-2002 as his final say in the matter. If on the basis of the above evidence the Enquiry Officer finds the workman guilty then it cannot be stated that the enquiry against the workman is not fair or proper or that the findings of the Enquiry Officer are perverse.

There is not even an iota of evidence to show that the workman was put under any psychological fear, duress or undue influence.

It has been contended on behalf of the workman that the workman submitted a letter dt. 3-6-2002 Ex. W-1 before the Enquiry Officer whereby he denied all the charges levelled against him but there is absolutely no proof of the fact that the workman submitted Ex. W-1 before the Enquiry Officer and, therefore, the story regarding Ex. W-1 appears sheer concoction.

As regards the complaint filed by the workman before the police on 11.6.2002 it does not appear that any FIR was registered on the basis of that complaint. Moreover, why did the workman wait up to 11-6-2002 when he had already admitted the charge on 13-5-2002 and 3-6-2002. If the allegations against him were false then why did he make good the loss and deposited a cheque of Rs. 1,60,000 on 22-5-2002. It is thus clear from the conduct of the workman that filing a complaint before the police in this matter was a gimmick.

Learned counsel for the workman has placed reliance on 2002 II LLJ 1035 (Rajasthan) but the facts in that case are different and, therefore, that ruling is of no help to the workman in this matter.

It is clear from the above discussion that the workman has miserably failed to prove issues nos. 1 and 2.

Issues nos. 1 and 2 are, therefore, decided in favour of the bank and against the workman.

The matter may be fixed for producing evidence for the workman on remaining issues on 13-12-2011.

JUSTICE G. S. SARRAF, Presiding Officer

ANNEXURE-II

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

JUSTICE G. S. SARRAF, Presiding Officer

REFERENCE No. CGIT-1/11 of 2004

Parties : Employers in relation to the management of
Bank of India

And

Their Workman (M. F. Barot)

Appearances :

For the Management : Mr. Lancy D'Souza,
Management Representative

For the workman : Workman present in person

State : Maharashtra

Mumbai, dated the 22nd day of November, 2012

AWARD PART-II

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of Bank of India, Mumbai in dismissing the services of Mr. M.F. Barot w.e.f. 15-6-2002 is legal and justified? If not, what relief is the workman entitled to?

It is not necessary to narrate the facts here as the facts have been stated in detail in the Award Part I dt. 12-12-2011 passed by this Tribunal.

Following are the issues :

- (1) Whether the enquiry held against the second party workman is not fair and proper?
- (2) Whether the findings of the Enquiry Officer are perverse?
- (3) Whether the action of the management of Bank of India, Mumbai in dismissing M.F. Barot w.e.f. 15.6.2002 is not legal and justified?
- (4) Whether the punishment awarded to the second party workman is shockingly disproportionate?
- (5) Relief?

Issue nos. 1 and 2 have been decided against the second party workman. Thereafter the workman has filed his affidavit and he has been cross examined by learned counsel for the Bank.

Heard Mr. Lancy D'Souza learned representative for the Bank and the workman.

Issue No. 3 : Issue nos. 1 and 2 have been decided against the workman and it has been held that the enquiry against the workman was fair and proper and that the findings of the Enquiry Officer are not perverse. There is nothing on record to show that the dismissal of the workman M.F. Barot w.e.f. 15-6-2002 is illegal or unjustified. The workman too has not explained as to how his dismissal is illegal or unjustified.

Therefore, Issue no. 3 is decided against the workman.

Issue No. 4 : The workman was found guilty of defrauding the Bank by misappropriating an amount of Rs. 1,59,300 from the cash safe during the period from 4-4-2002 to 13-5-2002. Thereafter the disciplinary authority awarded the punishment of dismissal without notice in terms of clause 21(a) of the Bipartite Settlement dtd. 14-2-1995.

Once there has been an enquiry in accordance with the principles of natural justice and the findings recorded at that enquiry are not frowned upon then this Tribunal should not interfere with the quantum of punishment unless the punishment is shown to be vitiated by malafides. This certainly is not the position in this case.

The banking business requires absolute devotion, integrity and honesty and if this is not there then surely the confidence of the public/depositors will be impaired. In such cases there should be no place for generosity or misplaced sympathy. Considering all the facts and circumstances of the matter I do not think that the punishment imposed against the workman is shockingly disproportionate to the charges proved against him so as to warrant interference by this Tribunal.

Issue no. 4 is, therefore, decided against the workman.

Issue No. 5 : The workman is not entitled to any relief.

Award Part II is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 74.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ट्यूटीकोरिन पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 72/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-44011/1/2011-आई आर (बी-II)
श्रीश राम, अनुभाग अधिकारी

New Delhi, the 17th December, 2012

S.O. 74.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Tuticorin Port Trust and their workman, which was received by the Central Government on 14-12-2012.

[No. L-44011/1/2011-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 30th November, 2012

PRESENT : A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 72/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Tuticorin Port Trust and Tuticorin Cargo Handling Labour Pool and their Workmen)

Between :

The General Secretary : 1st Party Petitioner Union
Boat Workers Union, 188,
Kaliappar Pillai Street
Tuticorin-1

AND

1. VOC Chidambaranar : 2nd Party/1st Respondent
Tuticorin Port Trust
Tuticorin-628004

2. The Deputy Traffic : 2nd Party/2nd Respondent
Manager
Tuticorin Port Trust
Cargo Handling
Labour Pool
Administrative Office
Opp. Harbour Telephone
Exchange, Tuticorin-4

Appearance :

For the 1st Party/ : Sri K. S. Narayanan,
 Petitioner Union : Sri M. Jeyaprakash, Authorized
 Representative

For the 1st and 2nd : Sri Yashwanth, Advocate
 Party/Management

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-44011/1/2011-IR (B-II) dated 18-08-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of Tuticorin Port Trust for not regularizing/deploying the workmen of the Petitioner Union on par with Cargo Handling Labour Pool Workers is justified or not? What relief the Petitioner Union is entitled to?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 72/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim, Counter and Rejoinder Statement as the case may be.

3. The contentions in the Claim Statement briefly read as follows:

The workmen in the dispute whose list is enclosed from S. No. 1 to S.No. 208 in fit health and having put in 10-30 years service and who had worked under the sailing vessel owners formed part originally under the Tuticorin Stevedors Association. Second Respondent is constituted and administered by First Respondent, a statutory body. Tuticorin Old Port is not a natural port but is a manmade port without deep sea facilities to receive heavy laden ship in the harbour terminal. Earlier before the formation of Port Trust, cargo ship would be anchored seven nautical miles from “Rabbit island” and the cargos would be loaded/unloaded through boats in mid-sea and the same would be downloaded opposite to Tuticorin Old “B” Port. Likewise cargoes would be loaded at Port “B” through boats and unloaded into ship in mid-sea by boatmen. Even the new Port “A” though modernized to receive heavy ships by engagement of barges in mid-sea excess heavy load is lighter-aged to bring ship to the said port. Even after formation of Port Trust though wharfs/platforms to receive ship were built and sea-depth deepened marginally all heavy laden ship could not anchor due to shallow depth. Therefore the practice in “A” Port for anchoring them in mid-sea to unload excess cargoes by boatmen in boats continued till 1999 and thereafter by barges continued even today and after lightening the load from ship to the prescribed limit

they are brought into the Port Zone for further clearance from the respective ship. This system is indispensable even today as the sea depth is inadequate to receive larger ships into the Port. In both “A” and “B” port areas, R1 is responsible in deploying barges/boat and its workmen to unload cargoes in boats. R1 levied fees from Shipping agencies and distribute wages to the respective workmen through their representative bodies. Boat Owners Associations, Salt Producers Association, Port Consumer's council, Small Manufacturers Association, etc. forming a joint council used to enter into agreements with R1 to determine levy for payment of wages to boat workmen. TPT was formed in 1977. Tuticorin Stevedors Association (TSA) was constituted in 1981 to streamline the cargo handling services with various agencies. Yet the mid-sea cargo handling was done only by boatmen. Because of non-implementation of the term of agreement dated 06-12-1994 envisaging cargo handling workers to be brought under the direct control of port management a flash strike was called on, to which the port management in principle agreed by its letter dated 04-01-1998 to give the status of port employees as per certain conditions. Cargo handling of identical work in nature was/is being carried on by boat workers, more so, the nature of the work in mid-sea is more hazardous and also perennial at Tuticorin Port. On a Writ Petition No. 9635 of 1998 by the Petitioner/Workmen High Court directed consideration of their regularization within three months. On 18-10-1999 R1 informed that work of boatmen was different from that of other cargo handler and that request will be forwarded to TSA for consideration. the First Respondent on 22-12-1999 by 12(3) settlement constituted Second Respondent Body conferring management and administrative powers of the TSA to it under the aegis of its authority, Traffic Manager. Second Respondent thus became not only a part of the statutory body of the First Respondent herein but also the deciding authority as regards appointment, control and deployment of loading/unloading workmen in Port Area. In another WP No. 19354 of 1999 impleading R2 herein challenging it as unfair, unjustified and illegal, contention of R1 therein was that petitioner/workmen were manning in lighter-age boats, transporting cargo between mid-sea and shore and that they did not handle cargo but only were crew members of Ports which is factually incorrect. The further statement that cargo handling in mid-sea is only physically done by list of cargo handlers in labour pool which is again not true. The same stand was reiterated by R2 further stating that the said workmen were not members of recognized unions and there was no contract between Port Trust and the sailing vessels owners Association or any payment made by the Port to the Association. High Court directed the workmen to pursue remedy under the ID Act. Further representation of the Petitioner Union to R1 to merge the boat workers with cargo handlers under R2, made was in vain. ID raised having ended into failure the reference is

occasioned. There is denial of fundamental right in the constitution and violation of Articles-14 and 16 of the Constitution. The qualifications and eligibilities, allegedly, possessed by the cargo handlers under Labour Pool are possessed equally by the Boat workmen, who have in fact more practical experience and knowledge of the job. Discrimination on behalf that there is no representative character or from recognized union has no merit. Denial of their right to employment on par with cargo handlers is unjust and illegal. Hence the claim.

4. Counter Statement averments briefly read as follows :

Petitioner's entire claim is based on the misconception that the petitioner's members would come under the inclusive definition of "Cargo Handling Labour". Cargo Handling Labour are persons actually engaged in the cargo handling work on a regular basis like any other dock worker of any other major port. "Allied Workers" refers to Riggers. Petitioner members will not come under Bagging Labour, Scrapping Working, Sweeping Labour, Lashing/Unlashing Workers, Stitches, etc. Tuticorin Port was declared as a major port on 11.07.1974 by the Central Government. Prior to that the port was serving ships calling at the port. Loading and unloading of ships then were being carried on by engaging private workers under the "Kangani System". Cargo from the shore to the ships and ship to the shore was being transported through boats called "Lighters". As major port, ship started calling at the major port of Tuticorin also. However, the major port had the draught restriction of 30 feet depth at the entrance channel. Therefore, vessels with a draught of 27 feet alone could be handled at the major port. Therefore, "lighter age" system had to continue in the case of vessels with a draught of more than 27 feet calling at the major port. With the merger of the major and minor port from 01.04.1979, the erstwhile major port is called Zone "A" and the erstwhile minor port as Zone "B" of Tuticorin Port Trust. After deepening of the entrance channel and harbor basis in Zone "A" in November 1999, vessels with 35 feet draught can call at Zone "A" of the port. In the cargo handling operations the handling agents used to engage labour from the village around on casual basis. They were at the mercy of the headman called Kangani who supplied to the handling agents. This was in vogue in the major port in the initial stages and after integration in the Tuticorin Port Trust until 1981. This system was stopped by listing the casual workers on the formation of a labour pool during 1981 under Tuticorin Stevedors Association, a private body of Stevedors Handling Cargo in Tuticorin Port. The labour pool is being managed by the Tuticorin Port Trust Cargo Handling Labour Pool (TPTCHLP) from 01.01.2000. Boatmen including members of the Petitioner Union, man the boats called "Lighters" engaged in the transportation of cargo from the vessels

anchored in the mid-sea to the shore in the process of lighterage operations and they do not perform cargo handling work. The lighterage boats used to ply to the vessels in the midstream on their own sails previously. Now this lighterage are towed by port tugs on payment of hire charges by their owners. The boatmen ensure the safety of their ship alongside the ship at mid-sea while lightening the cargo and during the operation. The cargo handling work is done by the gangs of the cargo handling workers engaged by the handling agents and stevedors from the labour pool and not by the boatmen. The cargo handling workers, both in the lighterage operation at the mid-sea and at the berths in the breakwater system, are one and the same. They are drawn from the labour pool. The members of the Petitioner Union are not handling the cargo but are only managing the lighters in which the cargo are transported. They are therefore not listed in the labour pool. The boatmen are not cargo handling workers. They are only the crew of lighterage boats. The lighterage boats are supplied by the owners to the handling agents of cargo on hire basis for transportation of cargo. The hire charges are paid by the handling agents on the basis of tonnage carried by the boat on each trip. Hire charges are proportionately shared between the owners of the boat and the boatmen as mutually agreed. Besides, this, the boatmen also get some extra benefits like tea money, waiting charge, etc. from the handling agents. The cargo handling workers in the labour pool were being paid daily rated wages, monthly in various pay-scales as per wage revisions settlements applicable to the Port and Dock Workers in all the major ports of the country upto 31.12.1999. They report for work on regular basis and their employment is continuous. If not engaged on a particular day, they get attendance money as applicable. With the formation of TPTCHLP from 01.01.2000 they are paid monthly wages in approved pay-scales. The employment of the boatmen by the lighterage boat owners is not continuous or regular. Whenever there is a vessel carrying cargo for Tuticorin Port with a draught of more than 27 feet until November 1999 and more than 35 feet from December 1999 for lightening the cargo to get the permissible draught in Zone "A" of the port they get work and not otherwise. "Cargo Handling Workers" in the Port refers to the workers who are physically working on the cargo. The different categories of cargo handling workers in the labour pool actually engaged regularly like the dock workers of any major port are (i) tally clerk (ii) hatch tandal (iii) shore maistry (iv) winchman (v) signalman (vi) stevedors mazdoor (vii) shore mazdoor. "The other allied workers" are the riggers, bagging labour, scrapping workers, sweeping labour, lashing/unlashing workers, stitchers, etc. Their services are incidental to the main work of handling of cargo and are not required on a regular basis. But they are expected to be available in any part for handling of cargo. Since the beginning the cargo handling work is being done only by the cargo

handling workers and not by the workmen. After the formation of the Major Port Trusts Act, 1963, the labour pool was formed by the Central Government in 1981 listing the then cargo handling workers by the Port. The boatmen being not cargo handling workers their unions are not affiliated to the Federation of Port and Dock Workers and their wages are not covered under the Wage Revision Settlements of Cargo Handling Workers. The cargo handling Workers alone are governed by Clause-15A of the 12(3) settlement dated 06.12.94 between the managements of major port trusts and the five major federations of port and dock workers and not the boatmen. Thereafter the port initiated action to decasualize and absorb the cargo handling workers and bring them under Port Trust Management. However in partial modification of the proposal Central Government approved a scheme whereby erstwhile TSA (Labour Pool) should be maintained only as a separate Pool as "Tuticorin Port Trust Cargo Handling Labour Pool" w.e.f. 01.01.2000 retaining most of the characteristics of the erstwhile TSA (Labour Pool) but managed by an Officer of the Port. For this a 12(3) settlement read with Section-18(3) was signed on 22.12.1999. The Tuticorin Port Trust Cargo Handling Labour Pool since came into being from 01.01.2000 thus. As per the High Court direction in the Writ Petition of the petitioner the representation dated 12.03.1998 of the Petitioner Union demanding extension of benefits given to cargo-handling Workers to the boatmen was considered and rejected as per Port's letter dated 25.06.1999. It was also informed that an appeal to various port users, handling agents and sailing vessel owners would be issued to consider employment of suitable candidates from the list of boatmen. The cargo handling work of unloading from the ship to the boats alongside the ship in the midstream and lifting and unloading from the boat at the shore point is done by the listed cargo handling workers in the labour pool. It is not the boatmen who are the workmen of sailing vessel owners who discharge the extra and surplus tonnage of cargo from the ships anchored in the mid-sea. The boatmen only man the boats which are used for the transportation of the cargo from the mid-sea to the shore for further unloading on the shore by the cargo handling workers. Cargo handling work in both the zones of the port is performed by the listed cargo handling workers in the labour pool only and not by the boatmen. The stevedors and the clearing and forwarding agents draw gangs of cargo handling labour from the labour pool for cargo handling operations. Tuticorin Stevedors Association and Sailing Vessels Owners Association are two different and separate entities. It is only the stevedors handling cargo in Zone 'B' who indent for the services of labour from the labour pool and service of the lighterage boats from the Sailing Vessels Owners Association. In this transaction the Tuticorin Port Trust is not involved. The port provides terminal facilities only for cargo handling for sea-borne

traffic to the port. The boats used for lighterage operations are issued license by the Dy. Conservator of Port. Changes in the crew or carrying capacity of the license harbour craft is to be reported to the Licensing Officer. The boatmen are issued dock entry permits at the request of the boat owners as the port is a prohibited place. This does not mean that they are employed by the port. There is no contract between the Port Trust and the Sailing Vessel Owners Association. There is no payment made by the port to the association. There is no Employer-Employee relationship between the 2nd Respondent and the Boatmen. R2 agreed to offer employee status to the Cargo Handling Workers in the Labour Pool as a sequel to the 12 (3) settlement dated 6.12.1994. In terms thereof the cargo handling workers from the labour pool were to be absorbed under the Port Trust management in Tuticorin Port. The Petitioner Union members not being cargo handling workers cannot claim benefits of decasualization admissible to the cargo handling workers under the above settlements. There is a basis for this petitioner against R1 and R2 since port provides only terminal facilities for handling cargo. It is only the Stevedors and Clearing and Forwarding Agencies who are authorized to do the operations. The cargo handling workers in the labour pool have to be absorbed under the Port Trust Management as per the settlement already entered with the Unions on the pattern obtaining in other major ports. No such right vests with the boatmen, for any legal right to claim any employment in the Port as cargo handling workers. It would only be akin to the drivers and cleaners belonging to private transport vehicles used for carrying cargos from and to the port claiming under the Port Management. It is denied that the work of the boatmen is supervised by the R2. Allegations in the Claim Statement are contrary to true facts. The decasualization/absorption under 12(3) settlements is in respect of cargo handling workers in the labour pool with which boatmen petitioner union members are not at all concerned. There is no discrimination shown to them. Petitioner is misrepresenting facts saying that the boatmen are cargo handling workers in Zone "B" of the Port. Being not cargo handling workers they were not listed in the labour pool, now under the control of an Officer from the Port w.e.f. 1-1-2000. This fact stands accepted by the National Boatmen Union on 3-11-1999. There is no violation of Article-14 or 16 of the Constitution. That Port is the principal employer of the boatmen is denied. There is no contract with respondent by any agency for cargo handling work or transportation of cargo through lighterage boats. There is no basis for petitioner's absorption as boatmen with cargo handling workers in the labour pool. As petitioners are not cargo handling workers they cannot be treated on par with cargo handling workers in the labour pool. The primary responsibility of the respondents is to provide terminal benefits for cargo handling for seaborne traffic. The claim is without any

accrued legal right to the petitioner. Any interference by Tribunal will adversely affect the interest of the nation with respect to national and international trade. Petitioner is not a party to the settlements with reference to reference to decasualization of labour. Petitioner has no interest with the cargo handling labour but has interest only in bringing the boatmen into cargo handling labour pool. Boatmen cannot be equated with cargo handling labour which by itself is a class. The claim is only to be dismissed.

6. Rejoinder averments in a nutshell are as follows:

The TPTCHLP Scheme was intended to cover all workmen doing cargo handling in the Port as per the demands raised by the Unions but petitioner/workmen claims were not considered in terms of the spirit of the agreement and not brought into the scheme. Petitioner cargo handling workmen were employed by Handling Agents-cum-Vessel Owners, members of TSA, the terms and benefits of said agreements would rightly flow to them. It is denied that Labour Pool Agreement would not cover them. There is no difference in nature of work between boatmen of vessels owners and of cargo handlers of TSA or later TPTCHLP Schemes. Petitioner/workmen were employed in the cargo handling till 1998-1999 where after they were discontinued and their claim not considered. The Port is the principal employer of cargo handlers under the labour pool collecting levy from the shipping agents and TPTCHL is a regulator of listed employees for employment for which status of relationship the petitioner workmen is yearning and entitled to in law. There should be no discrimination in the treatment to deploy them as workmen by TPTCHL in cargo handling work in the Port.

7. Points for consideration are:

- (i) Whether the action of not regularizing/deploying the workmen of the Petitioner Union on par with cargo handling labour pool workers is justified or not?
- (ii) To what relief the workmen of the Petitioner Union are entitled?

8. Evidence consists of the testimony of WW1 and Ex.W1 to Ex.W18 on the petitioner's side and the testimony of MW1 and Ex.M1 to Ex.M11 on the Respondent's side.

Points (i) & (ii)

9. Heard both sides. Perused the records, documents, evidence and the written arguments on either side. The conspicuous arguments on behalf of the petitioner are that a cargo handler is nowhere defined, more so as to the physical handling of cargos from ships. Dock Worker covers cargo handlers. Physical handling of cargo is not a criteria as per Dock Workers (Regulation of Employment) Act, 1948 for a cargo handler to be as

such. TSA Labour Pool and TPTCHL Pool Workmen also do not handle cargo physically. It is only boat workers who handle cargos physically from ship and cause them reach the shore and vice-versa. As per the definition employees loading/unloading and movement of cargos are covered as employees under the Dock Workers Act. So much so Boat Workers as Dock Workers are also cargo handlers. The members of the Petitioner Union have evidently been employed as Boat Workers (Vide Ex.W3, Ex.W17 and Ex.W18). Really for classification of Cargo Handlers, an assessment of total work force is necessary under scientific study which has not been done. There is no difference in work functions between Cargo Handlers of TSA/TPTCHLP and Dock Workers. In the place of Boat Workers Bargemen are now engaged in their place. Bargemen whose function is similar to Boat Workers is held to be Dock Workers and hence cargo handlers. While the casual workers of both A and B zone had to be compiled for the making of TSA Labour Pool, it was not so done. The right under Clause-(5) of Ex.M1-Agreement to all workmen including Boat Workers in Zone "B" is to be protected. Though wages are not paid by the First Respondent to the Boat Workers not employed now but directly by R1, there is manifestation of Management having an invisible control over affairs of Boat Workers and Labour Pool. That in the place of Boat Workers, after 1999 the Bargemen are engaged shows the permanent nature of work done by the Boat Workers over decades. Deprivation from the engagement of Boat Workers is unjust, discriminatory and unfair. Not including them in the list of Labour Pool for decasualization/regularization is illegal, arbitrary and unjust. They have to be ordered to be regularized on par with Labour Pool Workers.

10. The prominent arguments on behalf of the Respondent are that there is no employer-employee relationship between the Petitioners/Workmen and the Respondents. The ID is not maintainable. The principal employers of the workmen were Sailing Vessel Owners. The workmen cannot be compared with the Cargo Handling Workers who are only Dock Workers. The workmen are only engaged in the transportation of cargo in boats called Lighters in the mid-sea. There is wide disparity in the payment of wages to the Cargo Handling Worker and the Workmen. Cargo Handling Workers were organized at the instance of Central Government forming Labour Pool by listing them as a regular force from handling agents and Stevedors through the Port Trust. Cargo Handling Workers are members of Unions affiliated to Federation of Port and Dock Workers and their wages were regulated through wage revision. That is not the case with the workmen. The petitioner union is not a party to the 1981 and 1984 settlements (Ex.M1 and Ex.M2). The said settlements also do not stand challenged

by them. Under the 1999 settlement The Cargo Handling Workers derived status of Port Employee. The same was also not challenged. Thus Petitioner Union after having allowed things to happen like this cannot unsettle the settled things. Now TPTCHLP got the status of a separate department with 1926 employees under the Port Trust. Thereafter merging TPTCHLP with the Port Trust approved by Government on 18.02.2011, 993 posts were created, thus merging all the existing Cargo Handling Workers with VOCPT under settlement dated 27.07.2011 between TPTCHLP and VOCPT, the former becoming now extinct. The claim is also not maintainable due to inordinate delay and laches on the part of the Petitioner Union. The claim is to be dismissed.

11. The question for consideration is whether not regularizing/deploying of the workmen of the Petitioner Union on par with Cargo Handling Labour Pool workers is justified or not. While the claim of the Petitioner Union is that they also come under the Cargo Handling Workers, it is vehemently repudiated by the Respondent. That the workers were employees under the Respondent is also denied by the Respondents.

12. Going by the materials, do not find any reason that would cogently lead to the conclusion that the Boat Workers were really members of the Dock Workers. They are shown to be workers employed by the Sailing Vessel Owners just for the transport of cargo loaded from ships to the boats to the seashore and back. There is nothing to show any employer-employee relationship between them and the Respondents. They were paid by Sailing Vessel Owners. Their wages were not fixed under any Wage Revision Settlements. The evidence adduced on behalf of the petitioner, whether oral or documentary, is not efficacious enough to prove that they come under the category of Cargo Handling Workers. In the various settlements they have not been parties directly or through their Unions. They have not raised any claims at the proper occasions of settlements. There is inordinate delay and laches on their part in making their claim for on par treatment with the Cargo Handling Workers. Discernibly the petitioners/workmen cannot be found to be on par with Cargo Handling Workers except that there has been a clamour emanated from them for being included as Cargo Handling Workers and for on par treatment with them in regard to deployment for work, regularization, service conditions and payment of wages. Their claims never blossomed into any right given rise to by way of any settlements, awards or directions from any Courts or authorities. Though they may dream of being approved as employees on par with the Cargo Handling Workers, the same is not in terms of any vested or acquired legal right. Their work cannot be found to be the same or equal to that of the Cargo Handling Workers. However it cannot totally be said that their claim is not justified.

13. A few of the reasons emanating from the Respondent against the claim are that the claim is inordinately delayed and is with laches. Again the claim is challenged saying that if it is sustained it will unsettle the settled things. For the above reasons according to me the claim of the petitioners cannot be defeated. Even if the claim has not been with a legal colour for having not been found approved in any settlement made between the relevant parties for want of due participation and involvement of a certain party or parties including the petitioner-workman yet that claim may still be justified for being approved and granted in the interest of justice in asking for on par treatment with the similar employees who worked with them in the same area of operation though in differently natured items of work or in different capacity. Here is a cause of some general workmen longing for on par treatment with some other employees who had been working in related areas of operation though with differently natured items of work. They have been working for several years and there could be nothing wrong in considering them for being regularized or deployed for the work presently done by the approved cargo handling workers. Though not included in any of the settlements for obtaining the rights on par with the Labour Pool there is no reason why they shall not be considered again for deployment to do the work now done by the Cargo Handling Workers under the Labour Pool.

14. As is made clear in the letter dated 25.06.1999 of the Port Trust while the claim of the Petitioner Union demanding extension of benefits given to Cargo Handling Workers to the Boatmen was rejected it was also informed that an appeal was issued to various Port Users, Handling Agents and Sailing Vessel Owners to consider employment of suitable candidates from the list of Boatmen. Let the said appeal to the mass of the determinate body of persons receive active considerations from the point of view of social justice so that the cause of the petitioner-workman could be decided in a positive manner to include them in the list of the labour pool for deployment/regularization as cargo handling workers on par with those presently approved and engaged as such under the Port Trust, Tuticorin. The argument of the Respondent that there is no employer-employee relationship between the workmen and the respondents and that for that reason the I.D. is not maintainable pales into insignificance. It is for the reason that evidently as well as has been admitted, originally the workmen who at the inception, constituted the workforce as the cargo handling workers were also not workmen directly under the respondents (employers) while they stood considered for being regularized as a workforce under the Port Trust as departmental employees as an outcome of various settlements and commenced and continue to enjoy all the benefits of a regularization as government employees allowing the fate of the petitioner-workmen to go into

deterioration sounds totally unjust, unfair, arbitrary and violative of principles of natural justice. The fact of such regularized workmen not previously having been workmen directly under the respondent, then did not emerge as a stumbling block in the matter of their regularization as "Labour Pool" workmen for being deployed as the cargo handling workers. Therefore there is no good reason why the cause of the petitioner-workmen shall not weigh consideration for deployment/regularization by being listed in the labour pool for being deployed/regularized as cargo handling workers on par with the existing labour pool workmen. The mere reason of the petitioner-workmen having not been participants in the various settlements or not having mooted their claims during the various settlements or not having challenged the settlements which have not provided for anything in their favour them and there is too trivial to reject the claims now preferred by the petitioner workmen. The delay and attributed latches on their part are not to be allowed to stand against them when their claims have a sound edifice in the larger interest of the society in terms of social and natural justice. I am also fortified in holding so for another reason as rightly argued by the learned counsel for the petitioner i.e, for the classifications of the cargo handling workers' an assessment of the total workforce on the basis of a scientific study was inevitable, which had not been done preceding the process. This shows lack of rational nexus in the matter of classification of the "cargo handling workers" in including them in the Labour Pool under TPTCHLP. Now under VOCTP it is pertinent to note that the origin of the cargo handling workers is traceable as casual labour from village around engaged by handling agents. They were at the mercy of headmen called Kangani, who supplied them to the handling agents. This system developed by listing the casual labour on the formation of a labour pool during 1981 under TSA, a private body handling cargo in the Tuticorin Port. The labour pool began to be managed by TPTCHLP from 01.01.2000.

15. The categorical averment in the Counter Statement of the respondents in Para. (17) to the effect that "it is only the Stevedores handling cargo in Zone "B" who indent for the services of labour from the Labour Pool and service of the lighterage boats from the Sailing Vessels Owners Association. In this transaction the Tuticorin Port Trust is not involved". When in the case of both the set of workers for being called for their services Tuticorin Port Trust is not involved there has not had been any employer-employee relationship between the workmen under the Labour Pool and the Tuticorin Port Trust, still the said workmen came to be regularized as Port Trust employees. Then it is alien to comprehensive why the petitioner-workmen happened to be left out of consideration. If it is due to their non-action during the settlements, the handicap occasioned

to them, thereby is not to be allowed to be perpetrated by remedying the handicap by corrective measures of acceding to their demands at the earliest occasion.

16. Perceivably (or not being diligent or vigilant enough to participate or moot their claims in the various discussions and settlements, when their claims, happened to receive no considerations, leading to rejection as seen as one of the limbs of the arguments of the respondent to negate their claims, when once they became so alive to their rights and sought to ventilate their grievances, they are to receive due considerations and defences like delay and latches cannot be availed as a formidable shield to defeat such claims. The contention that if the demand of the petitioner-workmen is approved and granted it would unsettle the settled things does not assume any importance in the context of situations affecting social justice. These defences, when set up as grounds for repudiating the claims, herein, being not of serious import, still while raised, discernibly weaken the other grounds set-up to defeat the demand of the petitioner. Cumulatively it is comprehensible that the defences raised herein to counter the demand of the petitioner union are seldom apt to reject it. When the claim of the petitioner happens to be granted and once they are included in the list of Labour Pool for being deployed/regularized as cargo handling workers with the status of Port Trust employees, the same is not to unsettle the settled things because, the same when done under a due process, all the aftermath repercussions and consequences can be visualized and adverse consequences could be averted and remedied providing the safeguards so as not to create any confusion, whatsoever. This defence is just a foreboding without any basis and is only to be rejected. Having due regard to equitable considerations, justice, good conscience the claim of the Petitioner Union deserves to be granted.

17. The claim of the Petitioner Union is thought justified to consider the list of boatmen for being deployed as Cargo Handling Workers and for regularization as and when vacancies arise. They are not to be totally repudiated as strangers who have been operating as Boatmen in the transport of cargo which is not a mediocre function in the matter connected with handling of cargo. They are integral part of the carrying of cargo without which the cargo handling operation done by the approved cargo handling workers cannot be executed with the required efficacy. In this view of the matter I am of the opinion that not regularizing/deploying the workmen of the Petitioner Union on par with Cargo Handling Labour Pool Workers is not justified. Hence it is ordered to consider them and make all endeavors to see that they are also listed in the category of Cargo Handling Workers for the specific and allied work and are conferred with all the benefits on par with the cargo handling workers, in a phased manner for which a due process shall be

commenced at once, continued in quick succession and completed in due course of time as the demand of cargo handling work and other circumstances may require and permit so as to materialize the hope and desire into reality rightly expressed in the appeal issued to various port users, handling agents, sailing vessel owners etc. to consider employment of suitable candidates from the list of boatmen (vide letter dated 25.06.1999 of the Port Trust) marked as Ex.W5.

18. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 30th November, 2012)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/
Petitioner Union : WNI, Sri P. Raj

For the 2nd Party/
1st Management : MW1, Sri M. Chitraputhran

Documents marked on the side of the Petitioner

Ex. No.	Date	Description
Ex. W1	21.07.1979	Memo of Settlement before the Tuticorin Port Trust
Ex. W2	01.08.1985	Minutes of the meeting between Boatmen/Owner/TPT before Asstt. Commissioner of Labour
Ex. W3	—	ID Card issued to workmen
Ex. W4	11.03.1999	High Court order in WP No. 9635 of 1998
Ex. W5	25.06.1999	TPT letter to Boat Workers Union
Ex. W6	21.09.1999	Petitioner Union reply to above
Ex. W7	18.10.1999	TPT reply to above Union letter
Ex. W8	22.12.1999	12(3) Settlement between TPT/ TSA and workmen
Ex. W9	16.02.2004	Petitioner Union letter to TPT
Ex. W10	13.08.2007	Petitioner Union letter to TPT
Ex. W11	28.01.1999	High Court order in WP No. 19354/1999
Ex. W12	21.04.1999	2(k) Petition by Petitioner Union
Ex. W13	12.06.2009	TPT letter to Boatmen Workers Union
Ex. W14	17.05.2010	Counter of TPTCHL to above petition
Ex. W15	26.05.2010	Rejoinder to above by Petitioner Union

Ex. W16	—	Annexure of left out list of employees
EX. W17	16.06.1975	Certificate issued to Boat crew by Port Authority
Ex. W18	—	ID. Cards issued by Port Authority to classified workmen-Boat/CHLP/Port Workmen between 1981-2005

Documents marked on the side of the Management

Ex. No.	Date	Description
Ex. M1	31-08-1981	Memorandum of settlement arrived at on 31.08.1981 between representative of the boat user and representative of the Cargo Handling Labour at Tuticorin under Section 12(3)
Ex. M2	6-12-1994	12(3) Settlement on 06.12.1994 between Chief Labour Commissioner, New Delhi and five federation over the demand of wage revision
Ex. M3	6-1-1998	12(3) Settlement between the Assistant Commissioner of Labour(Central) on 06.01.1998 management of TPC, TSA and Representative of five union over the issue of decasualization of cargo handling workers and staff
Ex. M4	12-3-1998	Boat Workers Union letter dated 12.03.1998
Ex. M5	25-6-1999	Request of the Boat Workers Union denied by TPT on 25.06.1999 in connection with WP No. 9635/98 WMP No. 14741/98
Ex. M6	22-12-1999	Memorandum of Settlement arrived at under Section 12(3) 1947 on 22.12.1999 between the management of Tuticorin Port Trust and Tuticorin Stevedors Association and their workmen represented by five union INTUC, HMS, AITUC, CITU and DMK to bring the workers staff and officers of the TSA under the Port Trust Cargo Handling Labour Pool to the managed by TPT

Ex. M7	21-4-2009	ID No. 2/41/2009 raised by Boat Workers Union dated 21-04-2009
Ex. M8	24-8-2009	Comments in ID 2/41/2009 dated 24-08-2009
Ex. M9	27-1-2010	Comments on I.D. 2/41/2009 dated 27-01-2010
Ex. M10	24-2-2011	Letter from Ministry of Shipping dated 24-02-2011 regarding scheme of Merger of TPTCHLP
Ex. M11	27-7-2011	12(3) Settlement over the issue of merger of Tuticorin Port Trust Cargo Handling Labour Pool (TPTCHLP) with VOC Port Trust.

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 75.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 245/2012 को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-12012/34/2011-आईआर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 17th December, 2012

S.O. 75.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 245/2012) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workman, which was received by the Central Government on 14-12-2012.

[No. L-12012/34/2011-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 245/2012

Registered on 7-8-2012

Shri Jodha Singh S/o Sh. Nirmal Singh, VPO Rachhin, Tehsil Raikot, Distt. Ludhiana

...Petitioner

Versus

Manager, Punjab and Sind Bank, Zonal Office, Bhai Wala Chowk, Ludhiana

....Respondent

Appearances

For the Workman None
For the Management Sh. J.S. Sathi Advocate

AWARD

Passed on this 22 November, 2012

The Government vide Notification No. L-12012/34/2011-IR (B-II) Dated 1-8-2012, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this tribunal :—

“Whether the action of the management of Punjab and Sind Bank, Zonal Office, Bhai Wala Chowk, Ludhiana in not regularizing the services of Sh. Jodha Singh, Peon on daily wages, S/o Sh. Nirmal Singh, VPO Rachhin, Tehsil Raikot, Distt. Ludhiana is just, valid and legal? What benefits the workman is entitled to and what directions are necessary in the matter?”

After receiving the reference the notices were issued to the parties. The parties put in their appearance. But the workman instead of filing the claim statement submitted an application to say that he has been appointed as part-time sweeper on regular basis and therefore he does not want to pursue his case and the reference may be disposed of as not pressed. From this application it is clear that there is no industrial dispute between the parties. The application is therefore allowed and the reference is accordingly decided as not pressed. Let two copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR, RASTOGI, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 76.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजमेंट ऑफ माइन्स कंट्रोलर (नार्थजोन) अजमेर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अजमेर के पंचाट (संदर्भ सं. सी.आई.टी.आर./2/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था।

[सं. एल-42012/72/2006-आईआर (डी यू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O.76.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.CITR/02/2007) of the Central Government Industrial Tribunal Ajmer as shown in the Annexure in the Industrial Dispute between the Management of Mines Controller (North Zone) Ajmer and their workman, which was received by the Central Government on 12-12-2012.

[No. L-42012/72/2006-IR (DU)]

SURENDRA KUMAR, Section Officer

अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर
पीठासीन अधिकारी-श्री मनोज कुमार व्यास, आर.एच.जे.एस.

प्रकरण संख्या-सी.आई.टी.आर. 2/2007

रेफरेंस संख्या- एल-42012/72/2006/आईआर (डीयू) दिनांक 9-1-07
श्री ओमप्रकाश पुत्र स्व. मोहनसिंह राजपुत निवासी 255, जवाहर नगर, अजमेर

.....प्रार्थी

बनाम

खान नियंत्रक, (नोर्थ जोन), भारतीय खान ब्यूरो, बी.9 आई बी एम, कॉलोनी, बल्लुपूरा रोड, आदर्शनगर, अजमेर

.....अप्रार्थी

उपस्थिति

प्रार्थी की ओर से : श्री आर.सी.जैन, प्रार्थी प्रतिनिधि

अप्रार्थी की ओर से : श्री विवेक पाराशर राजकीय अधिवक्ता

अवार्ड : दिनांक 31-10-2012

1. श्रम विभाग, केंद्र सरकार द्वारा इस न्यायालय के अधिनिर्णयार्थ निम्न रेफरेंस प्रेषित किया है :-

2. "Whether the action of the management of Mines Controller, Indian Bureau of Mines, Ajmer in terminating the services of Shri Om Prakash w.e.f. 26-7-2004, is legal and justified? If not, to what relief the concerned workman is entitled for?"

3. प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम प्रस्तुत कर कहा गया है कि उसकी प्रथम नियुक्ति दिनांक 17-7-1984 को दैनिक वेतन पर चतुर्थ श्रेणी कर्मचारी के पद पर हुई थी। प्रार्थी ने दिनांक 31-12-1992 तक निरंतर कार्य किया। दिनांक 31-12-1992 को उसे अनुचित और अवैध रूप से सेवामुक्त कर दिया। इस सेवामुक्ति का विवाद प्रार्थी ने

उठाया जिसमें श्रम न्यायालय अजमेर ने दिनांक 2-4-2002 को प्रार्थी के पक्ष में अवार्ड पारित किया और उसे सेवा में बहाल किये जाने के आदेश पारित किये गये। उक्त अवार्ड के विरुद्ध अप्रार्थी द्वारा माननीय राजस्थान उच्च न्यायालय में रिट याचिका दायर की गई जो खारिज हुई तथा बाद में माननीय राजस्थान उच्च न्यायालय की खण्डपीठ तथा माननीय उच्चतम न्यायालय में भी प्रस्तुत अपील व एसएलपी खारिज हो गई। प्रार्थी को दिनांक 27-1-04 को ड्यूटी ज्वोइन करवाई गई। इसके कुछ दिन पश्चात् ही अप्रार्थी ने प्रार्थी को हैरान व परेशान करना शुरू कर दिया और उसे कहा कि तुम पिओन का काम नहीं करोगे और तुम्हारा काम झाड़ू लगाना, लेट्रीन साफ करना तथा सफाई कर्मचारी का अन्य काम करना होगा। प्रार्थी ने इस संबंध में अपने अधिवक्ता के माध्यम से नोटिस भी भेजा जिसका अप्रार्थी ने कोई उत्तर नहीं दिया। अंत में दिनांक 21-12-04 को प्रार्थी को पुनः छंटनी करते हुए सेवामुक्त कर दिया। उक्त सेवामुक्ति अनुचित और अवैध है क्योंकि जिस कार्य के लिए प्रार्थी की नियुक्ति की गई थी वह कार्य अप्रार्थी के पास यथावत था। छंटनी/सेवामुक्ति के जो कारण बताये हैं वह पूर्णतया अनुचित और अवैध हैं। अप्रार्थी ने प्रार्थी को दिनांक 21-12-2004 के पत्र के साथ नोटिस वेतन व छंटनी मुआवजा की राशि जो डी.डी. के माध्यम से भेजी वह भी धारा 25-एफ के तहत देय नोटिस वेतन व छंटनी मुआवजे की वास्तव में मिलने योग्य राशि से कम थी। इस प्रकार अप्रार्थी ने औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ की पूर्ण पालना नहीं की। कोई वरिष्ठता सूची जारी नहीं की। प्रार्थी से जूनियर अनेक कर्मचारी कार्यरत थे तथा प्रार्थी को सेवामुक्त किये जाने के पश्चात् भी नये श्रमिकों को भर्ती किया गया है। इस तरह अप्रार्थी ने धारा 25-जी व 25-एच औद्योगिक विवाद अधिनियम का उल्लंघन किया है तथा नियम 77 व 78 की पालना नहीं की गई है। सेवामुक्ति से पूर्व कोई जांच नहीं की तथा पूर्वाग्रह से अनफेयर लेबर प्रेक्टिस अपनाते हुए सेवामुक्ति की गई। अतः निवेदन किया कि प्रार्थी की सेवामुक्ति को अनुचित एवं अवैध घोषित कर पुनः निरंतरता के साथ सेवा में लिये जाने का आदेश पारित किया जावे।

4. अप्रार्थी की ओर से जवाब में यह कहा गया है कि प्रार्थी को अवार्ड के आधार पर बनने वाली राशि का भुगतान कर दिया तथा प्रार्थी को सेवा में ले लिया गया। दिनांक 2-4-2002 के अवार्ड की पालना में प्रार्थी ने नियमानुसार ड्यूटी ज्वोइन नहीं की। उसने दिनांक 27-1-04 को ड्यूटी ज्वोइन की फिर दिनांक 4-2-04 तक काम किया। उसके बाद फिर गैर हाजिर हो गया। प्रार्थी को दिनांक 24-11-2004 का पत्र दिया जिसमें ड्यूटी पर उपस्थिति देने के लिये निवेदन किया गया। जिसमें प्रार्थी ने दिनांक 28-12-2004 को ड्यूटी पर उपस्थित होने के लिये अपने आपको पाबंद करवाया तथा प्रार्थी जानबुझकर ना तो ड्यूटी पर आता है और ना ही कार्य करता था। प्रार्थी को दिनांक वेतन भोगी कर्मचारी के रूप में जो भी कार्य उपलब्ध थे उन्हें करने के लिए रजिस्टर्ड डाक से पत्र भेजे गये। प्रार्थी को छंटनी मुआवजा नियमानुसार दिया गया। जिसे प्रार्थी ने लेने से इंकार

कर दिया। प्रार्थी को छंटनी मुआवजा राशि 1999 से 2003 तक प्रत्येक वर्ष में 15 दिन के वेतन के हिसाब से 6060 रुपये दिये गये। जिसे प्रार्थी ने लेने से इंकार कर दिया। प्रार्थी केवल एक मात्र दैनिक वेतन भोगी कर्मचारी था जो न्यायालय के अवार्ड से आया था। चूंकि अवार्ड में छंटनी का अधिकार दिया था, जिसकी पालना अप्रार्थी द्वारा नियमानुसार कार्यवाही की गई। प्रार्थी ही केवल एक व्यक्ति था। इसके अलावा अन्य किसी व्यक्ति को दैनिक वेतन भोगी कर्मचारी के रूप में नहीं रखा गया। प्रार्थी की छंटनी नियमानुसार की गई। अतः क्लेम खारिज करने का निवेदन किया गया।

5. प्रार्थी की ओर से न्यायालय में स्वयं के ब्यान ए. डब्ल्यू-1 करायें गये।

6. अप्रार्थी की ओर से एन.ए.डब्ल्यू-1 श्री नोयल डहंगा व एन.ए.डब्ल्यू-2 श्री दिनेश कुमार के बयान करवाये गये।

7. बहस सुनी और पत्रावली का ध्यानपूर्वक अवलोकन किया।

8. प्रार्थी की तरफ से बहस में कहा गया कि पूर्व में प्रार्थी के पक्ष में दिनांक 2-4-2002 को अवार्ड पारित किया गया था कि जिसके अनुसार प्रार्थी की सेवामुक्ति को अवैध व अनुचित माना जाकर प्रार्थी की सेवाएं निरंतर मानी गई थी। इसलिये प्रार्थी को प्रथम नियुक्ति तिथि से ही निरंतर सेवाएं मानते हुए छंटनी मुआवजा दिया जाना चाहिए था लेकिन उसे केवल 5 वर्ष का छंटनी मुआवजा दिया जो अनुचित एवं अवैध है तथा छंटनी मुआवजा दिनांक 21-12-04 को देय न्यूनतम दर 73 रुपये प्रतिदिन के अनुसार दिया जाना चाहिए था जो नहीं दिया गया। अतः उक्त आधारों पर धारा 25-एफ की पालना साबित नहीं होती है। इसके अलावा नोटिस वेतन तथा छंटनी मुआवजे का डी. डी. दिनांक 25-11-11 ही बना लिया था जबकि प्रार्थी को दिनांक 21-12-04 को सेवामुक्त किया गया। जिससे स्पष्ट होता है कि प्रार्थी को सेवामुक्त करने का मानस पहले ही बना लिया गया था। प्रार्थी को शौचालय की सफाई तथा अन्य कार्य पर रखने का आदेश प्रदर्श एम-4 दिया था। प्रार्थी को इस प्रकार अवार्ड का लाभ नहीं देना चाहते थे। रेगुलराइजेशन नहीं किये जाने बाबत जो कारण बताये गये हैं उनके संबंध में कोई दस्तावेजात पेश नहीं किये गये हैं जबकि विपक्षी के अधीन चतुर्थ श्रेणी कर्मचारी के पद रिक्त थे लेकिन प्रार्थी को विक्टीमाइज करने की दृष्टि से रेगुलर नहीं किया गया।

9. अपने तर्कों के सम्बन्ध में प्रार्थी पक्ष की ओर से निम्न न्यायिक दृष्टांत प्रस्तुत किये गये जिनका ससम्मान अवलोकन किया गया :

1— 2000 (84) एफ एल आर 619 (राज.डी.बी.)

2— 2001 डब्ल्यू एल सी (यूसी) 480

3— 2004 (3) एल एल जे 555

4— 2004 डब्ल्यूएलसी (यूसी) 650

5— 1994 (2) डब्ल्यू एलसी 316

6— 2010 (2) आरएलडब्ल्यू 1586 सुप्रीम कोर्ट

7— 2001 (1) आरएल आर 497

8— 2007 (5) डब्ल्यूएलसी 466

10. अप्रार्थी की ओर से बहस में कहा गया है कि पूर्व में पारित अवार्ड की पालना नियमानुसार कर दी गई थी। दिनांक 21-12-04 के आदेश से छंटनी की गई वह धारा 25-एफ की पूर्ण पालना करते हुए की गई है। उक्त छंटनी का अधिकार अवार्ड में दिया गया था जो विधि सम्मत है। अतः क्लेम खारिज करने की प्रार्थना की है।

11. उपरोक्त विवाद के संबंध में प्रार्थी गवाह ए डब्ल्यू-1 ओमप्रकाश ने मुख्य परीक्षण में क्लेम के तथ्यों की पुष्टि करते हुए बयान दिये हैं। जिरह में कहा है कि दिनांक 27-1-2004 से पहले मैंने ड्यूटी ज्वोइन नहीं की थी। यह सही है कि मुझे दिनांक 21-1-2004 का पत्र मिला था। जिसकी पालना मैंने ड्यूटी ज्वोइन की थी। यह सही है कि दिनांक 21-12-04 का छंटनी का नोटिस मिला था। जो डाक से मिला था। यह सही है कि इसके साथ डिमांड ड्राफ्ट भी था। दिनांक 4-2-2004 को गैर हाजिर नहीं रहा। मुझे दिनांक 4-2-2004 को ही उन्होंने हटा दिया था। यह सही है कि दिनांक 24-11-2004 को पत्र दिया था कि मैं ड्यूटी पर उपस्थित होऊँ। यह सही है कि मुझे जिस दिन छंटनी मुआवजे का नोटिस दिया था। उस समय 60 रुपये प्रति दिन के हिसाब से दिये जाते थे। मुझे दिनांक 4-2-04 को बुलाया नहीं गया था। उन्होंने कहा कि आवश्यकता होगी तो बुला लेंगे। मैं समझौता अधिकारी के यहां गया था। वहां मैंने छंटनी मुआवजे का एतराज किया था। मुझे पता नहीं है कि अप्रार्थी विभाग में स्वीकृत पद हो।

12. गवाह एन ए डब्ल्यू-1 नोयल डहंगा ने मुख्य परीक्षा में कहा है कि प्रार्थी को वर्ष 1999 से वर्ष 2003 तक प्रत्येक माह में 15 दिन के हिसाब से राशि की गणना कर 6060 रुपये दिये गये थे। जिसे प्रार्थी ने लेने से इंकार कर दिया। उसके बाद दिनांक 21-12-2004 को छंटनी नोटिस डाक से भेजा गया था। उसके साथ ड्राफ्ट भी भेजा था। छंटनी मुआवजे का नोटिस प्रदर्श एम-1 है। जिरह में कहा है कि जहां तक मेरी जानकारी है छंटनी मुआवजे हिसाब से ही दिया गया था। यह सही है कि पद व्यय सुधार आयोग के तहत अभ्यर्पित किये जाने तथा 10 प्रतिशत अनिवार्य कटौती और सीधी भर्ती पर पाबंदी बाबत कोई प्रलेख न्यायालय में पेश नहीं किये। यह कहना गलत है कि छंटनी के समय पोस्ट उपलब्ध हो। यह सही है कि हमने दिनांक 27-1-2004 के आदेश के बाद प्रार्थी को झाड़ू लगाने, लेट्रीन साफ करने और सफाई करने का आदेश दिया था। यह सही है कि हमने 31-12-1992 से पूर्व प्रार्थी से झाड़ू लगाने लेट्रीन साफ कराने एवं सफाई कर्मचारी का काम नहीं लिया था। यह सही है कि हमने इन काम के अतिरिक्त अन्य काम करने के प्रार्थी को कोई आदेश नहीं दिये। उपरोक्त कार्य

इससे पहले सफाई कर्मचारी करते थे। जो कार्यालय की आवश्यकता होती थी वह कार्य प्रार्थी से लिये जाते थे।

13. गवाह एनएडब्ल्यू-2 दिनेश कुमार ने जिरह में कहा कि यह सही है कि शौचालय की सफाई का कार्य स्वीपर का है। यह सही है कि श्रमिक ने 2002 से पहले कभी भी शौचालय की सफाई का कार्य नहीं किया था। दिनांक 21-12-2004 को हमारे संस्था में न्यूनतम वेतन साठ रुपये था। यह मुझे पता नहीं कि श्रमिक को वर्ष 1999 से पूर्व का कोई छंटनी मुआवजा दिया है अथवा नहीं दिया है। सेवामुक्ति आदेश एवं डी. डी. श्रमिक को मिलने की रसीद पत्रावली में संलग्न नहीं है। यह मुझे ध्यान नहीं है कि श्रमिक की सेवाएं निरंतर माने जाने के बावजूद वर्ष 1999 से पूर्व का छंटनी मुआवजा दिया गया है अथवा नहीं।

14. उपरोक्त साक्ष्य विवेचन के अनुसार प्रार्थी का यह कथन है कि उसकी प्रथम नियुक्ति दैनिक वेतन पर 1984 में हुई थी तथा उसने 31-12-1992 तक कार्य किया। तत्पश्चात् उसे अवैध सेवामुक्ति कर दिया। जिसका विवाद उठाने पर उसके पक्ष में अवार्ड दिनांक 2-4-2002 पारित किया गया। जिसकी पालना में दिनांक 27-1-2004 को ड्यूटी पर लिया गया एवं पुनः दिनांक 21-12-2004 को छंटनी करते हुए सेवामुक्ति कर दिया गया। प्रार्थी ने दिनांक 21-12-2004 के आदेश से छंटनी किये जाने को चुनौती दी है तथा यह कहा है कि उक्त छंटनी अवैध है क्योंकि अप्रार्थी के पास प्रार्थी की नियुक्ति जिस कार्य के लिये हुई थी वह कार्य यथावत था। छंटनी के कारण गलत बताये गये हैं तथा नोटिस वेतन तथा छंटनी मुआवजा की राशि वास्तव में मिलने योग्य राशि से कम थी तथा प्रार्थी से जूनियर अनेक श्रमिक कार्यरत थे तथा प्रार्थी को सेवामुक्ति करने के बाद नये श्रमिकों को भर्ती किया गया। अप्रार्थी का कथन यह है कि प्रार्थी को पूर्व अवार्ड की पालना में दिनांक 27-1-2004 को ड्यूटी पर लिया गया था तथा उक्त अवार्ड दिनांक 2-4-2002 में अप्रार्थी को यह स्वतंत्रता दी थी कि धारा 25-एफ औद्योगिक विवाद अधिनियम की पालना नये सिरे से छंटनी की कार्यवाही करने के लिये स्वतंत्र होंगे। इस प्रकार अवार्ड दिनांक 2-4-2002 से ही अप्रार्थी को यह स्वतंत्रता दी थी कि वे प्रार्थी को उपलब्ध पद, उपयोगिता व उसकी सेवाओं को ध्यान में रखते हुए रेगुलराइज करने के लिये स्वतंत्र होंगे अन्यथा धारा 25-एफ के तहत छंटनी करने को स्वतंत्र होंगे। अप्रार्थी का कथन है कि प्रार्थी की सेवाओं को नियमित करने की संभावनाओं को देखा गया था। परन्तु प्रार्थी की सेवाएं नियमित करना संभव नहीं होने की वजह से छंटनी की गई तथा छंटनी मुआवजे की गणना नियमानुसार की जाकर कुल 6060 रुपये का डाफ्ट प्रार्थी को प्रेषित किया गया। जिसे प्रार्थी ने लेने से इंकार कर दिया। अतः प्रार्थी की छंटनी पूर्णतया विधिक एवं विधि सम्मत है। प्रार्थी का इसके विपरीत यह कथन है कि उसे छंटनी मुआवजा व नोटिस वेतन जितना मिलना चाहिए था उससे कम कर दिया है। इस संबंध में उभय पक्ष द्वारा पत्रावली पर जो मौखिक व दस्तावेजी साक्ष्य प्रस्तुत किये गये हैं उससे यह प्रकट होता है कि दिनांक 2-4-2002 के अवार्ड के द्वारा प्रार्थी के पक्ष में निम्नलिखित आदेश दिया गया था :—

“प्रार्थी की सेवामुक्ति दिनांक 31-12-92 को अवैध व अनुचित घोषित किया जाता है। इसका असर इस प्रकार रहेगा जैसे प्रार्थी को सेवामुक्ति किया ही न गया हो व उसे आकस्मिक श्रमिक के रूप में बहाल किया जाता है।

दि. 31-12-92 से 30-12-98 के बीच की अवधि में प्रार्थी को किसी प्रकार का पूर्व वेतन देय नहीं होगा।

दि. 30-12-98 के बाद से सेवा में पुनः लिये जाने तक प्रार्थी को रु. 44 प्रतिदिन अथवा सक्षम सरकार द्वारा दैनिक मजदूरी में किये गये संशोधन की दर से वेतन देय होगा। उक्त पूर्व वेतन पर प्रार्थी को चार प्रतिशत ब्याज भी वार्षिक दर से दिया जावेगा।

अप्रार्थी, अपने कार्यालय में उपलब्ध रिक्त पद एवं प्रार्थी की उपयोगिता की स्थिति को मूल्यांकन कर प्रार्थी की लंबी सेवाओं को ध्यान में रखते हुए उसे रेगुलराइज करने के लिये स्वतंत्र होंगे अन्यथा धारा 25-एफ औद्योगिक विवाद अधिनियम की पालना नये सिरे से छंटनी को कार्यवाही करने के लिये स्वतंत्र होंगे।”

15. उपरोक्त अवार्ड के अनुसार प्रार्थी को आकस्मिक श्रमिक के रूप में बहाल किये जाने के आदेश दिये गये थे तथा यह कहा था कि उसका असर ऐसा रहेगा कि जैसे प्रार्थी को सेवामुक्ति किया ही नहीं गया हो अर्थात् प्रार्थी की सेवाएं नियमित मानी गई तत्पश्चात् अप्रार्थी को यह भी स्वतंत्रता दी गई कि वे रिक्त पद की उपलब्धता, प्रार्थी की उपयोगिता व सेवाओं को ध्यान में रखते हुए उसे रेगुलराइज करने को स्वतंत्र होंगे अथवा धारा 25-एफ के तहत छंटनी कार्यवाही करने के लिये स्वतंत्र होंगे।

उक्त अवार्ड के अनुसार प्रार्थी की सेवामुक्ति को अनुचित एवं अवैध मानते हुए पुनः आकस्मिक श्रमिक के रूप में माना गया तथा सेवाएं नियमित माने जाने का भी आदेश था। अतः धारा 25-एफ के अन्तर्गत छंटनी मुआवजा प्रथम नियुक्ति तिथि से छंटनी की दिनांक तक दिया जाना था। इस संबंध में प्रार्थी की ओर से न्यायिक दृष्टांत 2000 (84) एफ.एल.आर. 619 राजस्थान उच्च न्यायालय प्रस्तुत किया गया है। उक्त न्यायिक दृष्टांत में प्रतिपादित विधिक सिद्धांत के अनुसार प्रार्थी की सेवाएं नियमित माने जाने की स्थिति में छंटनी मुआवजा भी तदनुसार जो सेवकाल होता है उसके अनुसार गणना कर देना चाहिए। दिनांक 21-12-2004 का जो आदेश प्रदर्श एम-2 पत्रावली पर प्रस्तुत किया है, उसके अनुसार छंटनी मुआवजे की गणना 1999 से 2003 तक की गई है। इससे पूर्व की अवधि का छंटनी मुआवजा गणना में नहीं लिया है जो उक्त विधिक सिद्धांतों के अनुसार लिया जाना चाहिए था क्योंकि प्रार्थी की सेवाएं अवार्ड दिनांक 2-4-2002 के अनुसार नियमित मानी गई थी। अतः उक्त प्रतिपादित सिद्धांत के प्रकाश में धारा 25-एफ के तहत छंटनी मुआवजे की जो गणना अप्रार्थी द्वारा प्रदर्श एम-2 के जरिए की गई है वह त्रुटिपूर्ण तथा अपूर्ण होना साबित होता है। इन परिस्थितियों में धारा 25-एफ की पालना पूर्ण रूप से नहीं किया जाना प्रमाणित होता है। अतः प्रार्थी की छंटनी प्रदर्श एम-2 के जरिए जो की गई है उनके अन्तर्गत धारा 25-एफ की विधि सम्मत पालना किया जाना साबित होता है। अतः यह माने जाने योग्य है कि प्रार्थी की छंटनी धारा 25-एफ की पूर्ण पालना नहीं होने के कारण अवैध एवं अनुचित है।

17. इस प्रकरण में रेफरेंस में प्रार्थी की सेवामुक्ति दिनांक 26-7-04 अंकित की गई है। प्रार्थी की ओर से एक प्रार्थना-पत्र प्रस्तुत कर कहा है कि प्रार्थी की सेवामुक्ति तिथि में संशोधन कराना आवश्यक है। बहस के दौरान उभय पक्ष द्वारा यह तथ्यात्मक स्थिति स्वीकार की गई है कि प्रार्थी की छंटनी प्रदर्श एम-2 द्वारा की गई जिसके अनुसार छंटनी की दिनांक 21-12-04 होना पाया जाता है। प्रार्थी की ओर से न्यायिक दृष्टांत 2007 (5) डब्ल्यूएलसी 466 इस संबंध में प्रस्तुत किया गया है। उक्त न्यायिक दृष्टांत के अनुसार यदि ऐसी त्रुटि रेफरेंस में अंकित दिनांक के संबंध में पाई जाती है तो ऐसी प्रकृति की त्रुटि को संशोधित करते हुए श्रम न्यायालय द्वारा अवार्ड पारित किया जाना विधि सम्मत है। स्वीकृत रूप से प्रार्थी की छंटनी की दिनांक प्रदर्श एम-2 के अनुसार 21-12-2004 होना प्रकट होता है। अतः विवाद का उत्तर सेवामुक्ति की दिनांक 21-12-04 मानते हुए दिया जाना न्यायोचित है।

18. उपरोक्त विवेचन के अनुसार प्रार्थी की छंटनी दिनांक 21-12-2004 को धारा 25-एफ की पूर्ण विधि सम्मत पालना नहीं होने से अनुचित माना गया है, अतः प्रश्न यह रहता है कि प्रार्थी क्या अनुतोष पाने का अधिकारी है। प्रार्थी का इस संबंध में कथन है कि उसे अनुचित रूप से सेवामुक्ति किया गया है तथा पूर्व अवार्ड दिनांक 2-4-2002 की पालना में रेगुलराइज नहीं किया गया। इस संबंध में समुचित कारण भी नहीं दर्शाया गया है। अतः उसे पुनः सेवा में निरंतरता के साथ बहाल किया जावे तथा अप्रार्थी को निर्देशित किया जावे कि वह उसे सेवा में रेगुलराइज करें।

19. प्रकरण के जो तथ्य हैं उसके अनुसार अवार्ड दिनांक 2-4-2002 के द्वारा अप्रार्थी को आकस्मिक श्रमिक के रूप में बहाल करने का आदेश दिया गया था तथा अप्रार्थी को स्वतंत्रता दी गई थी कि वह उपलब्ध रिक्त पद/सेवाओं को ध्यान में रखते हुए उसे रेगुलराइज करने को स्वतंत्र होगा अन्यथा धारा 25-एफ की पालना करते हुए प्रार्थी की छंटनी करने को स्वतंत्र होंगे। इस संबंध में प्रदर्श एम-2 का अवलोकन करने से यह प्रकट होता है कि उक्त आदेश में निम्नलिखित प्रकार से अंकित किया गया है :—

“इस संबंध में सूचित किया जाता है कि उनकी सेवाओं को नियमित किए जाने की संभावनाओं को खोजा गया। किन्तु व्यय सुधार आयोग (ERC) के तहत कुछ पद अध्यापित किए गए हैं। उसी प्रकार सरकार के आदेशानुसार 10 प्रतिशत अनिवार्य कटौती के तहत एवं सीधी भर्ती के पदों को भरने के संबंध में सरकार द्वारा लगाई गई पाबंदी के फलस्वरूप उनकी सेवाओं को नियमित किया जाना संभव प्रतीत नहीं होता है।

अतः यह निर्णय लिया गया है कि अधिनियम के उक्त पैरा में दर्शाए अनुसार औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ के तहत दैनिक वेतन भोगी सेवाओं से उनकी छंटनी किए जाने का निर्णय लिया गया है।”

अतः उपरोक्त आदेश में अंकित कारणों से अप्रार्थी द्वारा प्रार्थी की सेवाओं को नियमित किया जाना संभव नहीं मानते हुए प्रार्थी की

छंटनी किये जाने का निर्णय लिया गया। पूर्व अवार्ड दिनांक 2-4-02 में अप्रार्थी को इस संबंध में स्वतंत्रता दी गई थी कि वह समग्र मूल्यांकन के पश्चात् प्रार्थी को रेगुलराइज कर सकते हैं अथवा धारा 25-एफ की पालना कर छंटनी कार्यवाही कर सकते हैं। उक्त अवार्ड की पालना में प्रार्थी की सेवाओं को नियमित किये जाने की संभावनाओं पर विचार किया। प्रदर्श एम-2 में वर्णित कारणों से प्रार्थी की सेवाएं नियमित नहीं करना संभव नहीं मानते हुए छंटनी की कार्यवाही का निर्णय लिया गया। प्रार्थी का कथन है कि जो कारण अप्रार्थी ने नियमित नहीं करने बाबत बताये हैं वह पर्याप्त नहीं हैं तथा इस संबंध में दस्तावेजी साक्ष्य भी नहीं है परन्तु पूर्व अवार्ड में अप्रार्थी को स्वतंत्रता दी गई थी कि प्रार्थी की सेवाएं समस्त स्थिति का मूल्यांकन कर नियमित कर सकते हैं एवं प्रस्तुत साक्ष्य से प्रकट होता है कि अप्रार्थी द्वारा संभावनाओं को देखा गया परन्तु यह पाया कि प्रार्थी की सेवाएं नियमित किया जाना संभव नहीं है। अतः प्रार्थी की छंटनी का निर्णय लिया गया। प्रार्थी को आकस्मिक श्रमिक के रूप में बहाल किया था तथा पूर्व-अवार्ड के द्वारा अप्रार्थी को प्रार्थी की सेवाएं मूल्यांकन करने के पश्चात् नियमित करने या छंटनी करने दोनों स्वतंत्रताएं दी गईं तथा जो आदेश इस संबंध में प्रदर्श एम-2 पारित किया था उसे देखते हुए यह नहीं कहा जा सकता कि अप्रार्थी द्वारा प्रार्थी को नियमित करने पर विचार ही नहीं किया गया हो। उक्त आदेश मनमाना हो, यह भी साबित नहीं होता है। अतः प्रदर्श एम-2 आदेश उक्त सीमा तक पूर्व अवार्ड की पालना में पारित किया जाना प्रकट होता है। परन्तु यह भी स्पष्ट है कि धारा 25-एफ की पालना पूर्ण रूप से नहीं की गई जैसा कि उपरोक्त विवेचन किया गया है। अतः प्रकरण के उक्त समस्त तथ्यों, परिस्थितियों तथा विधिक स्थिति के अनुसार प्रार्थी की दिनांक 21-12-2004 को की गई सेवामुक्ति/छंटनी धारा 25-एफ की पूर्ण विधिसम्मत पालना नहीं होने से अवैध एवं अनुचित है, परन्तु उपरोक्त विवेचन के अनुसार प्रार्थी सेवा में बहाली का अधिकारी प्रकट नहीं होता है तथा एकमुश्त क्षतिपूर्ति राशि प्राप्त करने का अधिकारी होना उपरोक्त विवेचन के अनुसार प्रकट होता है। अतः विवाद का उत्तर इस प्रकार से दिया जाना न्यायोचित है।

आदेश

फलतः केन्द्र सरकार की ओर से प्रेषित विवाद का उत्तर इस प्रकार से दिया जाता है कि प्रबंधन खान नियंत्रक, भारतीय खान ब्यूरो, अजमेर द्वारा प्रार्थी श्री ओमप्रकाश की सेवाएं दिनांक 21-12-2004 से समाप्त करना धारा 25-एफ की पूर्ण विधि सम्मत पालना नहीं किये जाने से अनुचित एवं अवैध है। उपरोक्त विवेचन के अनुसार प्रार्थी सेवा में पुनर्स्थापित होने का अधिकारी नहीं है, परन्तु प्रार्थी अप्रार्थी से एकमुश्त क्षतिपूर्ति राशि रुपये 75,000 (अक्षर पिचहत्तर हजार रुपये) प्राप्त करने का अधिकारी होगा। अप्रार्थी उक्त एकमुश्त क्षतिपूर्ति राशि का भुगतान प्रार्थी को अवार्ड प्रकाशन के तीन माह के भीतर करें।

मनोज कुमार व्यास, न्यायाधीश

का.आ. 77.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकाम डिस्ट्रिक्ट मैनेजर सागर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी.जी.आई. टी./एल.सी./आर/01, 02, 03, 04, 08, 09, 10, 12, 13, 14, 15, 17, 18, 19, 20, 21/2003 और 117/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था।

[सं. एल-40012/125, 126, 127, 128, 132, 133, 134, 88, 89, 90, 91, 93, 94, 42, 43, 44, 30/2002-आईआर(डीयू.)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 77.—In pursuance of Section. 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/01,02,03,04,08,09,10,12,13,14,15,17,18,19,20,21/2003 and 117/2002) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the Telecom District Manager Sagar and their workman, which was received by the Central Government on 12-12-2012.

[No. L-40012/125, 126, 127, 128, 132, 133, 134, 88, 89, 90, 91, 93, 94, 42, 43, 44, 30/2002-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Presiding Officer : SHRI MOHD. SHAKIR HASAN

CASE NO. CGIT/LC/R/1/2003

Shri Jameel Ahmed Khan
S/o Shri Julfar Ahmed Khan,
C/o Mohd. Jaleel Khan SDO Phones-II,
Sagar

... Workman

Versus

The Telecom District Manager,
Sagar (MP)

... Management

CASE NO. CGIT/LC/R/2/2003

Shri Sharda Prasad Raikwar,
S/o Shri Ram Chandra Raikwar,
Kabir Ward, Khurai,
Sagar (MP)

... Workman

Versus

The Telecom District Manager,
Sagar (MP)

... Management

CASE NO. CGIT/LC/R/3/2003

Shri Raj Kumar Singh Thakur,
S/o Shri Bhagwan Singh Thakur,
R/o Bansia Bhansha,
PO Jarei, Tehsil Khurai,
Sagar (MP)

... Workman

Versus

The Telecom District Manager,
Sagar (MP)

... Management

CASE NO. CGIT/LC/R/4/2003

Shri Phool Singh
S/o Shri Brindawan,
Village Seoni Khurd,
Tehsil & Distt. Lalitpur (UP)

... Workman

Versus

The Telecom District Manager,
Sagar (MP)

... Management

CASE NO. CGIT/LC/R/8/2003

Shri Munnala Sahu
S/o Shri Chaudhela Sahu,
Shukrawari Touri,
Nr. Mahindra Mill,
Sagar (MP)

... Workman

Versus

The Telecom District Manager,
Sagar (MP)

... Management

CASE NO. CGIT/LC/R/9/2003

Shri Ghanshyam Das
S/o Shri Ram Prasad Kushwaha,
R/o Nai Basti,
Gandhi Nagar,
Lalitpur (UP)

... Workman

Versus

The Telecom District Manager,
Sagar (MP)

... Management

CASE NO. CGIT/LC/R/10/2003

Shri Jalim Singh
S/o Shri Mathura Prasad
C/o Mathura Prasad Bungla of
Dr. Smt. Geeta Mukherjee,
Cannt, Sagar (MP)

... Workman

Versus

The Telecom District Manager,
Sagar (MP)

... Management

CASE NO. CGIT/LC/R/12/2003

Shri Ravishankar Sahu,
S/o Shri Ganga Ram Sahu,
Sagar Rahlee Chandpur,
Sagar (MP) ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

CASE NO. CGIT/LC/R/13/2003

Shri Harishankar Bidua,
S/o Shri Ramchand Bidua,
Vill & Post Joron
Tehsil Prithvipur, Tikamgarh ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

CASE NO. CGIT/LC/R/14/2003

Shri Chandrabhan
S/o Shri Shankarlal,
Vill & PO Evni,
Thana Todi Fatehpur, Tehsil Garotha,
Jhansi ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

CASE NO. CGIT/LC/R/15/2003

Shri Ramesh Kumar Dixit,
S/o Shri Brahm Bhan Dixit,
Vill. & PO Ahaar, Tikamgarh ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

CASE NO. CGIT/LC/R/17/2003

Shri Ramesh Chandra,
S/o Shri Hardev Singh,
Vill: Bhaloni Lodhi, Tehsil Talbahet,
Lalitpur (UP) ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

CASE NO. CGIT/LC/R/18/2003

Shri Dhan Prasad Prajapati,
S/o Shri Bhagwan Dass,
Cantt. Bangla No. 18, Sagar (MP) ... Workman

Versus

The Telecom District Manager,
Sagar (MP)

... Management

CASE NO. CGIT/LC/R/19/2003

Shri Mangal Singh,
S/o Shri Kashiram
R/o Koregaon, Makroniya,
Sagar (MP) ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

CASE NO. CGIT/LC/R/20/2003

Shri Onkar Singh Thakur,
S/o Shri Indrajeet Singh,
Village Jamdara, Post Chakra,
PS Haldharpur,
Maunath Bhanjan (UP) ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

CASE NO. CGIT/LC/R/21/2003

Shri Kripa Shankar Pachori,
S/o Shri Rampratap Pachori,
Village Gour Jhawar,
Tehsil Deori,
Sagar (MP) ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

CASE NO. CGIT/LC/R/117/2002

Shri Ramdas Upadhyay,
S/o Shri Motilal Upadhyay,
R/o B.S.Jain Bageecha,
Sagar (MP) ... Workman

Versus

The Telecom District Manager,
Sagar (MP) ... Management

AWARD

Passed on this 6th day of November, 2012

1. (a) The Government of India, Ministry of Labour vide its Notification No. L-40012(125)/2002- IR(DU) dated 6/8-1-2003 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services

of Shri Jameel Ahmed Khan S/o Shri Julfkar Ahmed Khan w.e.f. 1-10-88 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(b) The Government of India, Ministry of Labour vide its Notification No. L-40012(126)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Sharda Prasad Raikwar S/o Shri Ram Chandra Raikwar w.e.f. 19-11-88 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(c) The Government of India, Ministry of Labour vide its Notification No. L-40012(127)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Rajkumar Singh Thakur, S/o Shri Bhagwan Singh Thakur w.e.f. 17-7-90 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(d) The Government of India, Ministry of Labour vide its Notification No. L-40012(128)/2002- IR(DU) dated 6/8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Phool Singh S/o Shri Brindawan w.e.f. 16-7-90 and not regularizing as regular employee is justified? If not what relief the workman is entitled to?"

(e) The Government of India, Ministry of Labour vide its Notification No. L-40012(132)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Munnalal Sahu S/o Shri Chauddelal Sahu w.e.f. 19-12-88 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(f) The Government of India, Ministry of Labour vide its Notification No. L-40012(133)/2002- IR(DU) dated

6/8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Ghanshyam Das S/o Shri Ram Prasad Kushwaha w.e.f. 29-11-88 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(g) The Government of India, Ministry of Labour vide its Notification No. L-40012(134)/2002- IR(DU) dated 6/8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP) , Bharat Sanchar Nigam Limited in terminating the services of Shri Jalim Singh S/o Shri Mathura Prasad w.e.f. 1-10-89 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(h) The Government of India, Ministry of Labour vide its Notification No. L-40012(88)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Ravishankar Sahu S/o Shri Ganga Ram Sahu w.e.f. 16-7-90 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(i) The Government of India, Ministry of Labour vide its Notification No. L-400 12(89)/2002- IR(DU) dated 6/8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Harishankar Bidua S/o Shri Permanand Bidua, Ex.Causal Labour w.e.f. 16-7-90 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(j) The Government of India, Ministry of Labour vide its Notification No. L-40012(90)/2002- IR(DU) dated 6/8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services

of Shri Chandrabhan S/o Shri Shankerlal w.e.f. 31-3-1989 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(k) The Government of India, Ministry of Labour vide its Notification No. L-40012(91)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP) , Bharat Sanchar Nigam Limited in terminating the services of Shri Ramesh Kumar Dixit S/o Shri Brash Bhan Dixit w.e.f. 10-7-90 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(l) The Government of India, Ministry of Labour vide its Notification No. L-40012(93)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) in terminating the services of Shri Ramesh Chand S/o Shri Hardev Singh, an ex-casual labour w.e.f. 13-7-90 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(m) The Government of India, Ministry of Labour vide its Notification No. L-40012(94)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) in terminating the services of Shri Dhanprasad Prajapati S/o Shri Bhagwandas, an ex casual labour w.e.f. 30-12-88 instead of regularizing the services of the workman is just and legal? If not, what relief the workman is entitled to?"

(n) The Government of India, Ministry of Labour vide its Notification No. L-40012(42)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP) , Bharat Sanchar Nigam Limited in terminating the services of Shri Mangal Singh S/o Shri Kashi Ram w.e.f. 31-1-90 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(o) The Government of India, Ministry of Labour vide its Notification No. L-40012(43)/2002- IR(DU) dated 8-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP) , Bharat Sanchar Nigam Limited in terminating the services

of Shri Onkar Singh S/o Shri Indrajeet Singh w.e.f. July 1990 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(p) The Government of India, Ministry of Labour vide its Notification No. L-40012(44)/2002- IR(DU) dated 9-1-2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP) , Bharat Sanchar Nigam Limited in terminating the services of Shri Kripa Shankar Pachori S/o Shri Rampratap Pachori w.e.f. 17-7-90 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

(q) The Government of India, Ministry of Labour vide its Notification No. L-40012(30)/2002 IR(DU) dated 5-8-2002 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Telecom district Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP) , Bharat Sanchar Nigam Limited in terminating the services of Shri Ram Das Upadhyay S/o Shri Motilal Upadhyay w.e.f. 6-3-88 and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

2. All the seventeen references are taken up together as all are alike on common subject matter and on same issues against the same management.

3. The case of all the workmen in short is that the workmen were engaged on muster rolls between the period of 1984 to 1988. They worked continuously and were terminated from services orally within the period of 1988 to 1990 without any notice and without payment of retrenchment compensation in violation of the provision of Section 25-F and Section 25-N of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that in view of the direction of the Hon'ble Supreme Court, a casual labour (grant of temporary status and regularization) scheme was formulated. It is submitted that the workmen be reinstated and thereafter be regularized with payment of back wages.

4. The management appeared in all the reference cases and filed separate written statements but all are identical and similar. The case of the management, inter alia, is that these casual labours were engaged on daily payment basis and they were never engaged for a regular work. It is stated that the development of Telecom facilities was done to increase the Telecom facilities such as new Telephone Exchanges in rural areas, laying of cable and other related work. As and when the project works were completed, the casual workers were not required to continue and were discontinued. Their engagement was of purely casual nature and for specific short period. These workers were engaged on casual basis as per office record given below—

S.No. with case No.	Name of the Labour	Fathers Name	Details of days of work per year as per record and verified by the department						
			1984	1985	1986	1987	1988	1989	1990
1	2	3	4	5	6	7	8	9	10
I. R/1/03	Jamil Ahmed Khan	Julfikar Khan	—	52	80	206	261 till October	—	—
2. R/2/03	Sharda Pd Raikawar	Ram Chander Raikawar	—	206	258	195	318(Nov.)	—	—
3. R/3/03	Raj Kumar Singh Thakur	Bhagwan Singh Thakur	—	—	—	19	270	314	157(July)
4. R/4/03	Phul singh	Brindawan	—	—	—	—	285	354	151 (June)
5. R/8/03	Munnalal Sahu	Chanddelal Sahu	—	—	—	—	237	—	—
6. R/9/03	Ghanshyam Das	Ram Prasad Kushwaha	—	109	113	59(April)	—	—	—
7. R/10/03	Jalim Singh	Mathura Prasad	—	—	272	148	327	264(Sept)	—
8. R/12/03	Ravi Shanker Sahu	Ganga Ram	—	—	—	—	244	262	155(July)
9. R/13/03	Hari Shankar Bidua	Permanand Bidua	—	88	328	329	361	361	176(July)
10. R/14/03	Chandra Bhan	Shankerlal	—	—	243	242	325	—	—
II. R/15/03	Ramesh Kr.Dixit	Brash Bhan Dixit	—	85	181	262	195	212	163(July)
12. R/17/03	Ramesh Chand	Hardev Singh	—	—	—	—	24	122	179(July)
13. R/18/03	Dhan Pd. Parjapati	Bhagwan Das	—	—	24	—	217(Dec)	—	—
14. R/19/03	Mangal Singh Pd.	Kashi Ram	—	—	271	139	294	208	158(July)
15. R/20/03	Onkar singh Thakur	Inderjeet Singh	—	—	76	323	236	296	202(July)
16. R/21/03	Kirpa shanker Pachori	Rampartap Pachori	—	—	233	187	305	212	167(July)
17.R/117/02	Ram Das Upadhyay	Motilal Upadhyay	24	322	331	335	85(March)	—	—

These workmen did not fulfill the conditions of grant of temporary status and regularization Scheme 1989. Their engagements were on temporary basis for project work and therefore the provisions of Section 25 F, 25 G and 25 H of the Act, 1947 are not attracted. The termination of these workmen was in accordance with the contract engagement under the provision of Section 2(00)(bb) of the Act, 1947.

It is submitted that the claim of the workmen is not justified and be rejected.

5. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

(i) Whether the action of the management in terminating the services of the workmen is legal and justified?

- (ii) Whether these workmen are entitled to be granted temporary status and thereafter be regularized in the services under the Scheme 1989?
 - (iii) To what relief all or any of the workmen are entitled?
6. It is evident on the pleadings of the parties that the following facts are admitted by them :
1. All the workmen were engaged on casual daily wages in the periods as indicated in the respective written statements of the management from the year 1984 to 1988.
 2. They had been orally terminated from services within the period from 1988 to 1990.
 3. No notice was given nor any retrenchment compensation was paid to any of the workmen before or after termination.
 4. In view of the direction of the Hon'ble Supreme Court, a casual labour (Grant of temporary status and regularization) Scheme 1989 was formulated.
 5. None of these workmen were given the benefit of the Scheme 1989.
 6. There was no contract of agreement in writing between the management and any of the workmen.

7. Issue No. I

Now the important point for consideration is as to whether the termination of all or any of the workmen is legal and justified by the management. According to the workmen, they are casual labours and worked continuously more than 240 days during the period of twelve calendar months preceding the date of termination and they were not given notice nor paid any compensation in compliance of the Section 25-F and 25 N of the Act, 1947. Their termination is void-ab-initio. On the other hand, the management has stated that these casual workers were engaged on daily wages for fixed and specific work in the project and electrical circles and on completion of work, these workers were discontinued as their services were not required. Their termination from work was in accordance with the contract of agreement and is attracted the provision of Section 2(oo)(bb) of the Act, 1947.

8. To prove the case, the workmen have adduced their evidence in their respective cases. In R/1/03, Shri Jamil Ahmed Khan is examined in the case who is workman. He has supported his case. He has stated that he worked from November 1984 on muster roll

till October 1988 when he was terminated without notice and without payment of compensation. In cross-examination, he has further supported his case and has stated that he was engaged orally. He has stated that he was daily wages employee and he got wages of the days he worked. The learned counsel for the management has submitted that this witness has stated in cross-examination that he was engaged for a specific work and after completion of the work, he was terminated. His evidence shows that there was no agreement between the management and the workman rather he was on daily wages. This shows that the provision of Section 2(oo)(bb) of the Act, 1947 is not applicable.

9. In this reference case, the management has also examined one witness namely Shri S.K. Mishra who is examined in the case. He is working as Divisional Engineer (Admn. & Planning), Sagar. He has stated that the workman Shri Jamil Ahmed Khan was engaged for laying down the telephone cable of a project. He has not supported the fact that there was a contract of employment between the management and the workman and on such contract, he was terminated under a stipulation. He has admitted that he was engaged as casual temporary worker in the project. He has admitted that casual daily wages employees filed a case before the Central Administrative Tribunal and the Hon'ble Tribunal directed to reinstate them. His evidence also shows that this workman was casual daily wages employee and there was no contract of agreement.
10. The management has also filed the statement of particular of work done by this workman which is admitted by the workman and is marked as Exhibit M/2. This shows that from Nov 1987 to Oct 1988, he worked 321 days. It is clear that he worked more than 240 days for a period of one year during twelve calendar months preceding the date with termination as required under Section 25 B(2) of the Act, 1947. Admittedly no notice was given nor any retrenchment compensation was paid under the provision of Section 25-F of the Act, 1947. This clearly shows that admittedly their termination was in violation of the provision of Section 25-F of the Act, 1947 and was not justified.
11. In R/2/03, the workman Shri Sharda Prasad Raikwar is examined. He has also supported his case. He has also stated that he worked on muster roll from April 1985 till Nov. 1988. He has denied that he was engaged for specific work. His evidence clearly shows that he worked more than 240 days in a

- calendar year and specially he worked for a period of one year during twelve calendar months preceding the date with termination as required under Section 25 B(2) of the Act, 1947. Admittedly no notice was given nor retrenchment compensation was paid as such the termination is apparently in violation of Section 25-F of the Act, 1947.
12. The management has examined one witness namely Shri D.C.Jain in this case. He is working as Divisional Engineer, Sagar. He has adduced the same and similar evidence in examination-in-chief as has been adduced by Shri S.K.Mishra, Divisional Engineer in R/1/03. His evidence shows that it is replica of the evidence of Shri S.K.Mishra which is humanly not possible. In cross-examination he has admitted that Shri Sharda Prasad Raikwar had worked more than 240 days in a calendar year and specially in the year of termination. Admittedly the management had not complied the provision of Section 25-F of the Act, 1947. His evidence shows that his termination is illegal and unjustified.
 13. The management has filed the statement of last twelve months which is admitted by the workman and is marked as Exhibit M/2. This statement also corroborates and establishes the fact that from Dec. 1987 to Nov 1988, he worked for 349 days. This statement also proves that the compliance of Section 25-F of the Act, 1947 was mandatory before terminating him from services which was violated by the management.
 14. In R/3/03, the workman Raj Kumar Singh Thakur has also supported his case in his evidence. He has stated that he was engaged in December 1987 on muster roll and was terminated in July 1990. He was admittedly working on casual basis. There is nothing in his evidence to disbelieve his evidence. His evidence also supports the fact that he worked continuously for a period of one year during twelve calendar months preceding the date of termination. This fact is also not denied by the management rather it is also proved by the management.
 15. This workman has filed a verified chart of the work done from Dec. 1987 to July 1990. The management has admitted the chart which is marked as Exhibit W/1. This chart clearly shows that from August 1989 to July 1990 in twelve calendar months preceding the date of termination he had worked 292 days. This shows that he shall be deemed to be in continuous service for a period of one year as required under Section 25 B(2) of the Act, 1947. Admittedly the provision of Section 25-F of the Act, 1947 is not complied.
 16. On the other hand, the management has also examined Shri D.C.Jain Divisional Engineer, Sagar. His evidence is copy of the evidence given in R/2/03. He has also corroborated the case of the workman that he worked more than 240 days as required under Section 25B(2) of the Act, 1947.
 17. The management has also filed the same verified chart which is filed by the workman. This chart is marked as Exhibit M/2. This further corroborates the case of the workman that the workman was in continuous service as required in Section 25B(2) of the Act, 1947. Exhibit M/3 is the statement of work of the workman Raj Kumar of the last twelve calendar months from the date of termination. This shows that he worked 292 days. This shows that it is admitted by the management that he has continuously worked for a period of one year during the period of twelve calendar months preceding the date of termination.
 18. In R/4/03, the workman Shri Phool Singh has also supported his case. He has stated that he worked from 1978 to July 1990. He has stated the days of work done by him at para-3. In cross-examination, he has further corroborated his case. He was admittedly casual labour. There is nothing to disbelieve his evidence.
 19. The management has examined the same witness Shri D. C. Jain, Divisional Engineer. The examination-in-chief is the similar copy of the evidence of this management witness examined in other reference cases. In cross-examination, he has admitted that the workman Phool Singh had worked for 1988 to 1990.
 20. The management has filed a statement of work of this workman of the last twelve months which is marked as Exhibit M/2. This shows that he worked 335 days. Admittedly no notice was given nor any retrenchment compensation was paid. As such it is established that there is violation of Section 25-F of the Act, 1947 in terminating his service.
 21. In R/8/03, the workman Shri Munna Sahu has also supported his case in his evidence. He has stated that he worked from Nov. 1985 to June 1988 on muster roll. He was also terminated without notice and without payment of compensation. In cross-examination, he has stated that he was engaged on daily wages. There is nothing in his evidence to disbelieve him rather his evidence is in corroboration to the evidence of the management which also proves that there is violation of Section 25-F of the Act, 1947 in terminating this workman.
 22. The management has examined the same witness Shri D.C. Jain. His evidence is again copy of the

evidence adduced in other cases. The management has filed the statement of work of Shri Munnalal of preceding twelve months from the date of termination which is marked as Exhibit M/1. This shows that in twelve months preceding the date of termination he worked 334 days. This shows that his service shall be deemed to be continuous service for a period of one year. Since admittedly Section 25-F of the Act, 1947 was not complied, as such his termination appears to be illegal.

23. In R/9/03, the workman Shri Ghanshyam Das has supported his case in his evidence. He has stated that he worked from October 1985 to Nov.1988. His evidence shows that he worked more than 240 days in twelve months preceding the date of termination. The management has examined the same witness Shri D.C.Jain. Examination-in-chief of this management witness is same as in other cases of other workmen. In cross-examination he has stated that the workman was casual worker. He is unable to say the period of days of work done by him. The management has also filed the statement of days of work of last twelve months from the date of termination which is marked as Exhibit M/1 This statement is admitted by the workmen. This statement clearly shows that he had worked only 108 days in the last twelve months preceding the date of termination. This is evident that his service shall not be deemed to be continuous service for a period of one year for the purpose to attract the provision of Section 25-F of the Act, 1947. This shows that his termination is justified.
24. In R/10/03, the workman Shri Jalim Singh is examined in the case himself. He has also supported his case that he worked on muster roll from January 1986 to Sept.1989. He has also stated the specific days of work done by him per year from 1986 at para-3. In cross-examination he has stated that he was daily wages employee. His evidence shows that he worked 240 days in a calendar year specially in twelve months preceding the date of termination.
25. The management has examined the same witness Shri D.C.Jain. There is no change in his evidence from other cases of other workmen and is a carbon copy. In cross-examination, he has admitted the days of work done by him in each year at para-7. His evidence clearly shows that he worked more than 240 days in a calendar year specially in twelve calendar months preceding the date of termination. His service shall be termed as continuous service in accordance with Section 25B(2) of the Act, 1947. His case is attracted under the provision of Section 25-F of the Act, 1947. The management has also filed statement of days of work done by Shri Jalim

Singh from Oct.1988 to Sept.1989 i.e. twelve months preceding the date of termination which is admitted by the workman. This said statement is marked as Exhibit M/1. This clearly shows that he worked 353 days and the provision of Section 25B(2) of the Act, 1947 is applicable. His termination appears to be illegal without complying Section 25-F of the Act.

26. In R/12/03, the workman Shri Ravi Shanker Sahu is examined in the case. He has supported his case that he worked on muster roll from April 1988 to July 1990. He has also stated the days of work done each year. His evidence supports the case that his termination without complying the provision of Section 25-F of the Act, 1947 is illegal and unjustified.
27. The management has examined the same witness Shri D.C.Jain. His evidence is carbon copy of the evidence adduced in other cases. In cross-examination, he has stated that he cannot say as to how many days the workman had worked. The management also filed the statement of days of work done by this workman in twelve calendar months preceding the date of termination which is marked as Exhibit M/1 on admission by the workman. This statement clearly proves the case of the workman that his service is continuous service under the provision of Section 25B(2) of the Act, 1947. This shows that without compliance of the Section 25-F of the Act, 1947, his termination is not justified.
28. In R/13/03, the workman Harishanker Bidua has supported his case in his evidence. He has also stated that he was engaged in Sept 1985 on muster roll and worked till July 1990. He has also supported the days of work done by him at para-3 which clearly shows that he was in continuous service under the provision of Section 25B(2) of the Act, 1947. He has further supported in cross-examination that he was on daily wages and was deputed on specific work. This shows that it does not mean that there was a contract of agreement between the management and the workman engaged on daily wages. The workman has filed verified statement of days of work which is marked as Exhibit W/1 on admission. It corroborates the evidence of this workman that his service was continuous under the provision of Section 25B(2) of the Act, 1947.
29. The management has examined Shri S.K.Mishra, the then posted as Divisional Engineer, Sagar. His evidence is also carbon copy of the evidence as has been adduced by him in another reference case No. R/1/03. He has no personal knowledge and can say only on the basis of record. He has admitted in

- his cross-examination that similarly situated casual labours were reinstated on the judgments of the Central Administrative Tribunal. The management has also filed statement of days of entire work of this workman which is marked as Exhibit M/2 on admission. The said statement of days of work is also filed by the workman which is Exhibit W/1. This verified statement proves the case of the workman that he worked from Sept 1985 to July 1990. This statement further shows that he worked more than 240 days in a calendar year specially prior to twelve calendar months preceding the date of termination. Exhibit M/13 is the statement of twelve calendar months preceding the date of termination. This shows that in twelve months, he worked 335 days. This fact further proves the case of this workman that his termination was illegal without complying the provision of Section 25-F of the Act, 1947.
30. In R/14/03, the workman Shri Chandrabhan has also supported his case. He has stated that he was engaged on muster roll in January 1986 and worked till March 1989. He has stated specific days of work done in each year at para-3. His evidence clearly shows that he was in continuous service as has been required under Section 25 B(2) of the Act, 1947.
 31. The management has examined the same witness Shri D.C.Jain in support of the case. His evidence also corroborates the case of the workman that the workman had worked more than 240 days in a calendar year. The management has filed statement of days of work done of the workman of twelve calendar months preceding the date of termination which is marked as Exhibit M/1 on admission. The said statement establishes the case that the workman had worked from April 1988 to March 1989 in twelve calendar months preceding the date of termination for 324 days. This fact shows that Section 25B(2) of the Act, 1947 is attracted and the provision of Section 25-F of the Act, 1947 was mandatory to be complied before termination.
 32. In R/15/03, the workman Shri Ramesh Kumar Dixit has stated in his evidence that he was engaged in October 1985 and worked till July 1990 on muster roll. He has also stated the specific days done in each calendar year. His evidence proves that he was terminated in violation of the provision of Section 25-F of the Act, 1947.
 33. On the other hand, the management has examined Shri S.K. Mishra, Divisional Engineer. His evidence is carbon copy of evidence adduced in R/1/03. His evidence does not help the management rather it proves the case of the workman that similarly situated daily wagers were reinstated on the direction of the Central Administrative Tribunal. He had no other personal knowledge of the case of the workman except on the basis of record. The management has filed statement of days of work done by this workman in twelve months preceding the date of termination on the basis of record which is marked as Exhibit M/2 on admission. This document shows that from August 1989 to July 1990 in twelve calendar months, he had worked 283 days as required under Section 25B(2) of the Act, 1947. This shows that the compliance of Section 25-F of the Act, 1947 was mandatory and essential before termination.
 34. In R/17/03, the workman Ramesh Chand has also come to support his case. He has stated that from March 1984 to July 1990, he was engaged on muster roll as daily wages employee. He has also stated the specific period of days of work done in each year at para-3. His evidence shows that he had worked more than 240 days in calendar year.
 35. The management has examined the same witness Shri S.K. Mishra in this case also. His evidence is in a same fashion and a carbon copy as has been adduced in other cases as discussed above. There is no additional evidence to help the management. The management has filed statement of days of work done by the workman in twelve calendar months preceding the date of termination which is marked as Exhibit M/2 on admission. This statement itself proves the case of the workman that the workman had worked more than 240 days as required under Section 25 B(2) of the Act, 1947. This document itself proves that the management had violated the provision of Section 25-F of the Act on terminating him from services.
 36. In R/18/03, the workman Shri Dhan Prasad Prajapati has come to support his case. He has also stated that he was engaged in April 1986 and worked till March 1988. He has also stated in his evidence about the specific date of days worked in a year.
 37. The management has examined Shri R.G.Gohe, Asstt. General Manager, Sagar. His evidence is also replica with the evidence of other witnesses of the management examined in other cases. This shows that one evidence was prepared and the same is used in all the cases by the witnesses of the management in all the seventeen cases. In cross-examination he has stated that the workman was casual labour and was engaged on contingency of work. His evidence shows that the workman had worked only 217 days. His evidence shows that his service shall not be considered to be a continuous service for a period of one year as required under

Section 25 B of the Act, 1947. The management has also filed statement of days of work done by the workman in twelve calendar months preceding the date of termination which is marked as Exhibit M/2 on admission. This statement clearly shows that he had worked only 217 days in twelve calendar months preceding the date of termination. This shows that he is not be considered to be in continuous service for one year preceding the date of termination as required in Section 25 B(2) of the Act. This shows that Section 25-F of the Act, 1947 is not applicable and the management is justified in his case.

38. In R/19/03, the workman Mangal Prasad Singh has also supported his case in his evidence. He has stated that he was engaged in January 1986 on muster roll and worked till July 1990 when he was terminated without notice and without payment of retrenchment compensation. He has stated the specific days of work done in each year. His evidence shows that his services shall be deemed to be a continuous service under the provision of Section 25B(2) of the Act, 1947. His termination from service is unjustified and illegal. He has also filed verified statement of the days of work done by him from January 1986 to July 1990 which is marked as Exhibit W/1 on admission by the management. This statement further proves that the workman Shri Mangal Prasad Singh worked continuously for a period of one year during the twelve calendar months preceding the date of termination under the provision of Section 25B(2) of the Act. It is clear that Section 25-F of the Act, 1947 is attracted in the case.
39. The management has examined Shri S.K.Mishra to support the case. His evidence is same as adduced in other cases. The management has filed the statement of days of work done by the workman which is marked as Exhibit M/2 on admission. The same statement is filed by the workman which is marked as Exhibit W/1. The relevancy of the document has already been discussed earlier. Exhibit M/3 is the statement of days of work of the workman from August 1989 to July 1990 which is marked as Exhibit M/2 on admission. This statement clearly shows that he worked 309 days in twelve calendar months preceding the date of termination as required under Section 25B(2) of the Act, 1947. Thus the evidence of the management also proves that the termination of Shri Mangal Prasad Singh is not justified without compliance of Section 25-F of the Act, 1947.
40. In R/20/03, the workman Shri Onkar Singh Thakur has also supported his case in his evidence. He

has stated that he was engaged in March 1986 on muster roll and worked till July 1990. He has specifically stated the number of days he worked each year. His evidence clearly shows that there was no contract being terminated under stipulation rather the workman was engaged on daily wages. It appears that there is no case under Section 2(o)(bb) of the Act, 1947. The workman has filed certified statement of the days of work done by him which is marked as Exhibit W/1 on admission by the management. This statement corroborates the case of the workman that he was engaged from March 1986 to July 1990. It is also established from the statement that he worked 352 days in twelve calendar months preceding the date of termination. His service is said to be continuous service for a period of one year during the period of twelve calendar months preceding the date of termination under the provision of Section 25B(2) of the Act. Thus the compliance of Section-25F of the Act, 1947 was mandatory in the case.

41. The management has examined the same witness Shri S.K.Mishra in this case also. His evidence is same as in other cases and there is no change even coma and full stop. The management has also filed the same statement of days of work done by the workman in each year which is also filed by the workman. This statement is also marked as Exhibit M/2 on admission by the workman. The relevancy has already been discussed. Exhibit M/3 is the statement of days of last twelve months preceding the date of termination. This statement shows that the provision of Section 25 B(2) of the Act, 1947 is attracted. This further shows that Section 25-F of the Act, 1947 was mandatory to be complied before termination.
42. In R/21/03, the workman Shri Kirpa Shankar Pachori has also supported his case in his evidence. He has stated that he was engaged in January 1986 on muster roll and was terminated in July 1990. His evidence also shows that he was in continuous service for a period of year during twelve calendar months preceding the date of termination as provided under Section 25 B(2) of the Act, 1947. His termination appears to be illegal under Section 25-F of the Act.
43. The management has examined Shri S.K.Mishra in the case also. There is no change in his evidence. He has deposed on the basis of record. There is no document to show that there was any contract of agreement between any of the workman. It is clear from the evidence that the workman was on daily wages and similarly situated daily wages employees were reinstated in the case by the order of the

Central Administrative Tribunal. The documentary evidence adduced by the management also corroborates the case of the workman. Exhibit M/2 is the statement of days of work done by the workman which is also admitted by the workman. This shows that from August 1989 to July-1990 i.e. in twelve months preceding the date of termination as required under Section 25-B (2) of the Act, 1947 he had worked more than 240 days. This shows that it is established that without compliance of the Section 25-F of the Act, 1947 the termination of the workman is illegal. There is no evidence to show that any notice was sent and any retrenchment compensation was paid to him before termination.

44. In R/117/02, the workman Shri Ram Das Upadhyay has come to support his case. He has stated in his evidence that he was engaged in December 1984 on muster roll and worked till March 1988 when he was terminated without notice and without payment of compensation. He has also stated the days of work done. His evidence shows that he was in continuous service as required under Section 25-B(2) of the Act, 1947. He appears to be terminated in violation of Section 25-F of the Act, 1947. The workman has filed statement of days of work done by him and the same is verified by the management. It is marked as Exhibit W/1 and W/2 on admission. These statements clearly show that the workman Shri Ram Das Upadhyay was engaged in December 1984 and worked till March 1988. It also shows that he had worked 327 days in twelve calendar months preceding the date of termination. This is clear that his service shall be said to be in continuous service for a period of one year from the date of termination as required under Section 25-B(2) of the Act, 1947. Thus the Section 25-F is applicable and the same appears to have not been complied by the management.

45. The management has examined Shri D. C. Jain, Divisional Engineer. His evidence is same as has been done against other workmen. His evidence further establishes the case of the workman that he was employed on casual basis and was engaged the required number of days as per Section 25-B(2) of the Act, and Section 25-F of the Act was mandatory to comply by the management before terminating him. The management has also filed the same verified statements of days of work of the workman which is marked as Exhibit M/2. The relevancy is already discussed earlier. Exhibit M/3 is the statement of last twelve months preceding the date of termination. This shows that he had worked 327 days in the last twelve months. Thus the provision of Section 25-B(2) of the Act, 1947 is attracted. This shows that it was mandatory to

comply the provision of Section 25-F of the Act, 1947. His termination appears to be not justified.

46. To sum up the entire evidence, it is clear that all these workmen were engaged on daily wages on muster roll and worked with the management. Their services were not found on contract basis rather they were engaged on the basis of contingency of work. It is also established that they had worked more than 240 days except Shri Ghanshyam Das and Shri Dhan Pd. Parjapati as required under Section 25 B(2) of the Act. But they had been terminated without giving any notice and without payment of any retrenchment compensation as has been required under the provision of Section 25-F of the Act, 1947. The evidence further establishes that Shri Ghanshyam Das and Shri Dhan Prasad Prajapati in R/9/03 and R/18/03 respectively had not worked 240 days to attract the provision of Section 25-B(2) of the Act, 1947 and therefore the compliance of provision of Section 25-F of the Act, 1947 was not required for only those two workmen.

47. The learned counsel for the workman has submitted that similarly situated casual labours filed cases before the Hon'ble Central Administrative Tribunal, Jabalpur (in short CAT, Jabalpur) and the Hon'ble CAT, Jabalpur also held that in view of Section 25-F(b) the termination is illegal. The learned counsel has filed the copy of judgment dated 28-8-95 passed in O.A.No. 411/1990, Dhaniram Tiwari and others and 17 other cases wherein the Hon'ble Tribunal held that—

“In the instant case, the petitioners submit that they have worked for more than one year and in some cases they have put in minimum 240 days in each year continuously for 3 to 4 years. In view of the matter, the respondents ought to have paid the benefit which accrued to the petitioners under Section 25 F(b) of the Act. It is not disputed that the petitioners in the present petitions do not fall within the excluded categories mentioned in Section 2(oo) of the Act and as such non-payment of the above mandatory benefits which are statutory in nature vitiates the termination orders passed in these cases.”

Thus it is clear that except the workmen Shri Ghanshyam Das and Shri Dhan Prasad Parjapati in R/9/03 & R/18/03 respectively, the termination of the services of other workmen is illegal and not justified in violation of the provision of Section 25-F of the Act, 1947 and therefore are vitiated. This issue is thus decided in favour of the workmen except Shri Ghanshyam Das and Dhan Prasad Prajapati and against the management.

48. Issue No. II

Now the another important point for consideration is as to whether the workmen are entitled to be granted temporary status and also be regularized in the services of the management under the Scheme 1989. According to the workmen, in view of the direction of the Hon'ble Supreme Court, casual labour (grant of temporary status and regularization) Scheme 1989 was formulated. It is stated that these workmen are entitled to be regularized under the scheme but inspite of giving the benefit, the management had terminated them. On the other hand, the management has contended that the workmen did not fulfill the conditions of the scheme. It is stated that the scheme was only for those casual labours who were engaged prior to 30-3-1985. Subsequently the policy had been further extended to casual workers engaged in project and electrification works vide order No. 269-4/93/STN dated 25-6-93 on the condition that they had been engaged between 31-3-85 to 22-6-1988 and were continuing as on the respective orders and had not remained absent for more than 365 days with effect from the issuance of the order.

49. The management has not filed the copy of the scheme in the case. The workman has filed the copy of judgment dated 28-8-95 passed in O.A. Case no. 411 of 1990 and 17 other cases by the Hon'ble CAT, Jabalpur wherein at para-7 the scheme is reproduced which is given as under-

"Para-7:—The scheme framed by the department is known as casual labourers (grant of temporary status and regularization) Scheme of the department of Telecommunications, 1989 and reads thus:

1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989.
2. This scheme will come in force w.e.f. 1-10-1989 onwards.
3. This scheme is applicable to the casual labourers employed by the Department of Telecommunications.
4. The provisions in the scheme would be as under:-
 - (a) Vacancies in the Group "D" cadres in various offices of the department of Telecommunications would be exclusively filled by regularization of casual labourers and no outsiders would be appointed to the cadre except in the

case of appointments on compassionate grounds till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant Recruitment Rules. However regular Group D staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In the case of illiterate casual labourers, the regularization will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties. They would be allowed age relaxation equivalent to the period for which they had worked continuously as casual labour for the purposes of the age limits prescribed for appointment to the Group D cadre, if required. Outside recruitment for filling up the vacancies in Group D will be permitted only under the condition when eligible casual labourers are Not available.

- (b) Till regular Group D vacancies are available to absorb all the casual labourers to whom this scheme is applicable, the casual labourers would be conferred a Temporary status as per the details given below.

5. Temporary status—

- (i) Temporary status would be conferred on all the casual labourers currently employed and who rendered a continuous service of atleast one year, out of which they must have been engaged on work for a period of 240 days (260 days in the case of offices observing five day week) Such casual labourers will be designated as temporary mazdoors.
- (ii) Such confenment of temporary status would be without reference to the creation/availability of regular Group D posts.
- (iii) Confenment of temporary status on a casual labourer wouldnot involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed any where within the recruitment unit/territorial circles on the basis of availability of work.

- (iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Gr.D posts.

6. Temporary status would entitle the casual labourers to the following benefits-

- (i) Wages at daily rates with reference to the minimum of the pay scale for a regular Gr.'D' official including DA, HRA and CCA.
- (ii) Benefits in respect of increments in pay scale will be admissible for every one year of service subject to performance of duty for atleast 240 days (206 days in administrative offices observing 5 day week in the year.
- (iii) Leave entitlement will be on pro rata basis, one day for every 10 days of work. Casual leave or any other kind of leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefit of encashment of leave on termination of services for any reason or their quitting service.
- (iv) Counting of 50% of service rendered under temporary status for the purpose of retirement benefits after their regularization.
- (v) After rendering three years continuous service on attainment of temporary status, the casual labourers would be treated on a par with temporary Gr.D employees for the purpose of contribution to General provident Fund and would also further be eligible for the grant of Festival Advance/food Advance on the same condition as are applicable to temporary Gr.D employees, provided they furnish two securities from permanent Govt. Servants of this Department.
- (vi) Until they are regularized, they would be entitled to productivity Linked Bonus only at rates as applicable to casual labour.

7. No benefits other than those specified above will be admissible to casual labourers with temporary status.

8. Despite conferment of temporary status, the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947 on the ground of non-availability of work. A casual labourer with temporary status can quit service by giving one month's notice.

9. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encashment of leave on termination of services.

10. The Department of Telecommunications will have the power to make amendments in the scheme and/or to issue instructions in detail within the frame work of the scheme.

It is also clear that the management issued letters time to time for removal of casual labours who were employed after March 1985. Para-8 of the said judgment is reproduced below—

“Para-8:

We may refer to some of the letters annexed to the petitions. In letter dated 7th February, 1990 issued by the office of Chief General manager, Telecommunications, Madhya Pradesh, Bhopal, it was stated that it has been decided by CGM that the removal of casual labourers who have been employed after March 85 can be completed in small phases by 31st March 90 and the report can be sent so as to reach the said office latest by 5th of April 1990. It was further stated that the casual labourers who had been employed on the basis of having worked in other units should not be removed straightaway but their service records should be verified and those who have been employed after 31-3-1985 should be removed. The letter further stated that those casual labourers who were working prior to March 85 and thereafter

remained absent for more than six months should not be employed at all. Yet by another letter dated 29-1-90, notices were sent to the applicants stating that the applicants were employed as temporary labourers and since the construction work for which they had been employed was complete, their services were not required from a particular date i.e. 28-2-90 and they would not be treated as labourers of the department. It was further stated in the said notice that if their services were not required before the aforesaid date, their services would be terminated in which even they would be entitled to the payment only for the period they had worked."

50. On the basis of the discussion of the evidence made above, it is implicit clear that these workmen were engaged as casual labours from 1984 to 1988 and worked for more than one year or for a period of 240 days in a year except Shri Ghanshyam Das and Shri Dhan Prasad Parjapati. These facts appear to have not been denied by the management. The Written Statement of the management and the documents filed by the management as has been discussed earlier clearly show that the workmen were engaged from 1984 to 1988 as admitted in the pleading by the management as stated in this award.
51. The learned counsel for the workmen argued that similarly situated casual labours directed to be regularized in cases where appointments were made prior to 22-6-1988. The learned counsel for the workmen relied the decision passed in O.A Case No. 411 of 1990 and 17 other cases on 28-8-95. The Para 17 to 19 of the said judgment are reproduced below—

Para-17:

The telecommunication department thereafter framed another scheme and worked out cases for absorption of casual labourers who have been conferred temporary status. Some of the employees had been granted temporary status from 25-6-1993 i.e. in respect of persons engaged after 30-3-85 and prior to 22-6-88. The question, therefore, in the present case is whether those who have been employed after the above dates have any right to be regularized.

Para-18:

We have examined the scheme as also the subsequent notifications issued and the order

passed by this Tribunal in OA No. 42/90 and connected petitions decided on 30-1-1994. All the petitions who come within the scheme for absorption issued on 4-1-1994 with cut off date as 22-6-1988 are entitled to be absorbed and the persons who are not covered by the said scheme are not entitled to get any benefit under the scheme. The case of Brij Kishore i.e. W.P.Bo. 1041 of 1988 (SC) points out that the cut off date as March 30 1985 is said to have been held as invalid by the Central Administrative Tribunal and vide the scheme known as casual labourers (Grant of temporary status and regularization) Scheme of the Department of Telecommunications, 1989 all casual employees who had rendered continuous service of atleast one year and who out of the said period had been engaged for work for 240 days in the calendar year were ordered to be regularized."

Para-19:

In view of the two judgments referred to above, the petitioners who fall within the ratio of the said judgments will get benefit of regularization. As such we answer the first question in favour of the petitioners. while issuing the said direction, we have also considered the decision of the Supreme court in AIR 1995 SC 1617."

Thus it is clear that the workmen who were engaged prior to 22-6-1988 and had completed an year in any calendar year or 240 days are required to be regularized in the services of the management. The evidence of the workmen as has been discussed earlier shows that except Shri Ghanshyam Das and Shri Dhan Prasad Parjapati other workmen fulfilled the criteria for granting temporary status and thereafter regularization in terms of 4(A) of the Scheme. Accordingly this issue is decided in favour of the workmen except Shri Ghanshyam Das and Shri Dhan Prasad Parjapati and against the management.

52. Issue No. III

Considering the discussion made above, it is clear that the workmen had worked more than 240 days in twelve calendar months preceding the date of termination except the workmen Shri Ghanshyam Das and Shri Dhan Prasad Parjapati. Therefore those workmen are said to be in continuous service for a period of one year under the provision of Section 25B(2) of the Act. Admittedly no notice was given to them nor any retrenchment compensation was paid in compliance of the provision of Section 25-F of the Act, 1947. Thus the termination of these

workmen from services on the respective dates as alleged except Shri Ghanshyam Das and Shri Dhan Prasad Parjapati is illegal and they accordingly are entitled to be reinstated. The workmen have stated in their evidence that they are unemployed from the date of termination. There is no cross-examination to these workmen by the management. The management is therefore directed to reinstate those workmen with full back wages. These workmen were admittedly engaged prior to 22-6-1988. As such the management is directed to grant them temporary status and then to regularize them in accordance with clause 4(A) of the Scheme 1989. The workmen Shri Ghanshyam Das and Shri Dhan Prasad Parjapati are not entitled to any relief. Accordingly the references are answered.

53. In the result a common award is passed in all the reference cases without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 78.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीएमपी एण्ड डीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (आई डी संख्या 19/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/474/1994-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 78.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol now as shown in the Annexure, in the Industrial Dispute between the management of CMP&DL and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/474/1994-IR (C-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE NO. 19 OF 1995

Parties : The management of CMP& DI Ltd., Burdwan

Vs.

The President, CMSI(CITU), Burdwan.

REPRESENTATIVES:

For the management : Sri P.K. Das, Ld. Advocate

For the union (Workman) : Sri S.K. Pandey, Ld. Representative

INDUSTRY: COAL STATE: WEST BENGAL

Dated - 29.11.12

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/474/94- I.R.(C-II) dated 16-05-1995 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Barmondia Drilling Camp in not promoting Md. Israil as Driver-cum-Mechanic in Cat. VI w.e.f. 26-2-88 is justified? If not, to what relief is the concerned workman entitled to?"

Having received the Order of Letter No.L-22012/474/94-I.R.(C- II) dated 16-05-95 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 19 of 1995 was registered on 26-05-95 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

It is submitted by both the parties that the case may be closed as the workman has expired. Since the workman has expired, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 79.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आई डी संख्या 20/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/62/2008-आई आर (सीएम-II)
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 79.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. Western Coalfields Limited and their workmen, received by the Central Government on 18-12-2012.

[No. L-22012/62/2008-IR (CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING
OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/20/2008

Date: 04-12-2012

Party No.1 The Sub Area Manager,
M/s Western Coalfields Ltd.,
Gondegaon Open Cast Mine,
Gondegaon, Tehsil Parseoni,
Nagpur.

Versus

Party No.2 Shri Laxman S/o Vithobaji Samrit,
R/o Near MSEB Office,
Santaji Nagar, J.N. Road,
Kandri-Kanhan, Tehsil.
Parseoni, Post Kanhan,
Nagpur.

AWARD

(Dated: 4th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Laxman Samrit, for adjudication, as per letter No.L-22012/62/2008-IR (CM-II) dated 30-06-2008, with the following scheduler:—

"Whether the action of the management of Western Coalfields Limited in dismissing Shri Laxman S/o. 29-07-2007 is legal and justified? To what relief is the claimant entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Laxman V. Samrit, ("the workman" in short) filed the statement of claim and the management of WCL, Gondegaon Open Cast ("party no. 1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he was appointed as a loader in 1984 and posted to work at Inder colliery and in the same year, he was posted as a driver at Kamptee Open Cast Mine and in 1985, he was first posted at Sillewara mines and then at Gondegaon mines as a dozer driver and while he was working at Gondegaon mines, he was served with a charge sheet along with suspension order dated 08-09-2004, for committing misconduct under clause 26.1 of the Certified Standing Orders, on the allegation of committing theft of diesel and he was not supplied with the documents and the list of witnesses along with the charge sheet and the enquiry was conducted in a most arbitrary manner and the enquiry officer submitted his report and on 21-04-2007 and a second show cause notice was issued to him and he submitted his reply on 15-05-2007, claiming the enquiry and findings to be illegal, but the party no. 1 issued the order of dismissal on 29-07-2007, dismissing him from services with immediate effect and the appeal preferred by him to the competent authority was also rejected. The further case of the workman is that his service record was clean and excellent and he was awarded with the best operator prize in 2007 and therefore, certain workers were jealous of him and they made false complaint against him. charge of theft of diesel levelled against him was false and the charge sheet was defective, as the memorandum of charges was not given to him and as the charge sheet was defective, the enquiry conducted on such a defective charge sheet was also illegal and arbitrary and during the enquiry, documents were not supplied to him, inspite of his demands and fair opportunity was not given to him to defend the case and on 07-04-2004, he was on night shift duty and as wet coal was coming from all the five machines and the main dumping was narrow, he found it difficult to dump coal in the main dumping and reported the matter to the Mining sirdar, Keshav Thosare, who was on duty and the Mining sirdar asked him to dump coal at another place to avoid production loss and accordingly, he went to another

site, about 150 to 200 meters away from the main dumping to dump the coal and there was no proper light at that site and when he stopped his dozer, about 5 to 6 person attacked him and threatened him to keep quiet or else to kill him and as such, he remained quiet and those persons started taking away diesel from his dozer and at that time, the security jeep came to the site for patrolling, for which the diesel thieves ran away from the spot, leaving the cans, in which they had taken out the diesel from the dozer and he came back to the main dumping and kept the dozer and reported the matter to the mining sirdar and the mining sirdar asked him to report the matter to the site incharge and accordingly, he reported the matter to the site incharge and despite the same, the charge sheet was issued against him leveling false allegation of theft of diesel and in the enquiry, the enquiry officer directed the management representative to argue the matter first and then, the enquiry officer recorded the examination-in-chief of the witnesses for the management one after the other, without giving him the scope to cross-examine them and the enquiry officer did not record the enquiry proceedings properly and the enquiry officer acted under pressure of the management and the enquiry officer acted as a prosecutor and he was biased and partial and there was no evidence to support the charge and under the pressure of the management, the enquiry officer submitted his report and the party no.1 did not consider his show cause, while imposing the punishment and he was acquitted in the criminal case instituted against him for the same incidence, by the Chief Judicial Magistrate and he is entitled for reinstatement in service with continuity and full back wages.

3. The party no.1 in its written statement has pleaded inter-alia that the workman was a dozer driver in Gondgaon mines and on 07-04-2004, he was on duty in the third shift and he took the dozer driven by him to another dumping yard, without permission and he indulged himself in committing theft of diesel from the dozer, with the help of some unknown persons and those unknown persons ran away, when they saw the security guards and though the security guards tried to catch hold of those unknown persons, they were not successful and in the meanwhile, the workman took the dozer to the main dumping yard and six cans filled with diesel were found from the place, where the dozer of the workman was previously standing and the security guard when asked the workman about his involvement in commission of theft of diesel from his dozer, the workman did not reply and went away and on 08-04-2004, a police complaint was lodged against the workman and the workman was also charge sheeted and he was served with the charge sheet dated 08/09-04-2004 and the workman submitted his reply on 14-04-2004, but as the reply was found to be unsatisfactory, management decided to hold departmental enquiry against him and appointed Shri M.B. Deshpande as the enquiry officer and the enquiry officer gave all opportunities to the workman to defend the

case and the departmental enquiry was held in accordance with the principles of natural justice and the witnesses for the management were examined in presence of the workman and his co-worker and opportunity was given to the workman for the cross-examination of the management witnesses and the workman was also given opportunity to adduce evidence in his defence and after the enquiry was closed, the enquiry officer submitted his report and the workman was supplied with the copy of enquiry report and second show cause notice was also issued to him on 21-04-2007 and the workman submitted his reply on 18-05-2007 and as the explanation of the workman to the second show cause notice was not satisfactory and as the charges levelled against him were proved beyond reasonable doubt in the departmental enquiry, the workman was dismissed from service on 29-07-2007, after the approval from the competent authority and the grounds raised in the statement of claim are nothing but wild imagination of the workman and the charges levelled against the workman were very serious in nature and the punishment imposed against the workman is not shockingly disproportionate. It is further pleaded by the party no. 1 that the workman had never demanded any document during the enquiry and the enquiry was fair and the findings of the enquiry officer are not perverse and every opportunity was given to the workman to defend himself in the enquiry and the service record of the workman was not clean and excellent and he was served with charge sheets dated 05-06-1996 and 14-8-1997 and in addition to the same, he was issued with warning letters and letters intimating deduction of wages for, 'no work, no pay' dated 25-03-2006, 07-09-2006, 01-10-2002, 24-09-1998, 11-12-1997 and 09-01-1991 and the charges were mentioned in detail in the charge sheet itself and the charge sheet was not defective and the appeal filed by the workman was dismissed as the same was devoid of merit and the workman is not entitled for any relief.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry against him, the validity of the departmental enquiry was taken as a preliminary issue for consideration and vide order dated 06-03-2012, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that it is clear from the evidence on the record of the departmental enquiry and the submission of the management representative that on 07-04-2004, the security guard while on patrolling found the dozer driven by the workman was standing on a dumping yard and the workman sitting on the dozer and two persons were standing there and when the guards tried to catch hold of those two persons, they fled away from the spot and the guards found six cans filled with diesel from the spot and the Mining Sirdar, Shri Keshav Thosare informed the security guard about diesel and coal

thieves to be active in the mine area and it is clear from the evidence on record that the two persons, who ran away from the spot were the diesel thieves and the six diesel cans filled with diesel seized by the guards were the diesel cans left by the said thieves and such facts were admitted by the security guards, Shri Balsugriv and Shri Bachai Prasad and the diesel cans were not recovered from the workman and no seizure memo was prepared for such seizure and the signature of the workman was not taken on such memo and from the said facts, it is clearly proved that the contention raised by the management representative about the workman allowing the thieves to commit theft of the diesel is not all correct and management failed to prove the charges against the workman and the evidence adduced in the departmental enquiry against the workman is not trustworthy and the entire case of theft was based on assumption and presumption, which is not permitted in law and inspite of documentary evidence in support of the innocence of the workman, the enquiry officer held the workman guilty of the charges levelled against him and as such, the findings of the enquiry officer are perverse and the management did not examine any of the witnesses, before this Tribunal in support of the charges levelled against the workman and in the criminal case no. 44/2004, which was instituted against the workman for the incident of theft of diesel, the workman was acquitted and as the charges and evidence adduced in both the departmental enquiry and the criminal case were the same, the workman should not have been held guilty of the charges in the departmental enquiry and the enquiry officer was biased and his findings are perverse and the punishment imposed on the basis of such findings is highly illegal and disproportionate and liable to be set aside.

6. Per contra, it was submitted by the learned advocate for the party no. 1 that the departmental enquiry held against the workman has already been found to be legal, proper and in accordance with the principles of natural justice and the charges of theft of diesel has been proved against the workman and the findings of the enquiry officer are based on the materials on record of the enquiry and the same are not at all perverse and there is nothing on record to show that the enquiry officer was biased and the management has lost confidence on the workman and the punishment imposed is not shockingly disproportionate and there is no scope to interfere with the punishment.

It was further submitted by the learned advocate for party no. 1 that in a case, where enquiry is independent of criminal proceedings, acquittal in a criminal court is of no help and even if, a person stands acquitted by a criminal court, domestic enquiry can be held and punishment can be imposed and the workman in the case is not entitled to any relief.

In support of such contentions, the learned advocate for party no. 1 placed reliance on the decisions reported in

(2007) 1 SCC-222 (APSRTC vs. Raghuda Sivasankar Prasad) and (2012), SCC-442 (Divisional Controller, Karnatak S.R.T.C. Vs. M.G. Vittal Rao).

7. Before delving into the merit of the matters, I think it proper to mention the principles enunciated by the Hon'ble Apex Court in the decision cited by the learned advocate for the party no. 1.

In the decision reported in (2007) 1 SCC-222 (Supra), the Hon'ble Apex Court have held that:—

“Labour Law- Penalty/Punishment Proportionality Quantum of punishment-Theft of employer's property-Punishment that may be awarded-Factors to be considered-Held, loss of confidence occupies the primary factor and not the amount of money involved-Once employee has lost confidence of the employer, it would not be safe to continue the employee in service. In such cases, there is no place for generosity or sympathy on part of judicial forums to interfere with quantum of punishment- Hence on facts, punishment of removal from service was not disproportionate and was just, reasonable and proportionate to the proved misconduct - High Court erred in granting reinstatement with continuity in service on ground that the respondent workman had not been involved in any misconduct of theft during his past services. This conclusion of High Court was shockingly disproportionate to the nature of charges already proved - High Court can modify punishment in exercise of its Art. 226 jurisdiction only when it finds that punishment is shockingly disproportionate to the charges proved - Order of removal from service, restored - Dismissal - Misconduct - Constitution of India- Art. 226.

B. Labour Law-Dismissal-Judicial review /validity-Scope of interference by High Court under writ jurisdiction-Held, once Labour Court in its award upheld removal from service by judiciously and fairly taking into consideration entire facts and circumstances of the case, High Court could not have interfered with under Art. 226.

C. Labour Law- Penalty/Punishment- Proportionality-Quantum of punishment-Interference by Labour Court/Tribunal-Held, it is not open to Tribunals and courts to substitute their subjective opinion in place of the one arrived at by the domestic tribunal.”

8. In the decision reported in (2012) 1 SCC-442 (Supra), the Hon'ble Apex Court have held that:—

“Labour Law-Penalty/Punishment—Proportionality/Quantum of punishment - Acquittal in criminal proceedings-Effect- Allegations of cash theft against respondent in collusion with four other employees by cutting padlock of cash room of appellant employer-Fair departmental enquiry conducted, charges proved and dismissal order passed-However, respondent acquitted of offences under Ss. 457 and 381 r/w S. 34 IPC in criminal revision-Effect.

Held, question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if dismissal from services was based on conviction by criminal court in view of provisions of Art. 311 (2) second proviso (a) of Constitution or analogous provisions in statutory rules applicable in a case— In case where enquiry is independent of criminal proceedings, acquittal in a criminal court is of no help— Even if a person stands acquitted by a criminal court, domestic enquiry can be held, since standard of proof required in a domestic enquiry and that in a criminal case are different— Further held, facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry— On facts held, once delinquent employee was found guilty of all charges and there was due adherence to natural justice while conducting domestic enquiry, punishment of dismissal was proportionate to delinquency— Dismissal, upheld— Penal Code, 1860 - Ss. 457 and 381 r/w S.34 - Constitution of India, Art. 311 (2) second proviso (a).

B. Labour Law - Domestic/Departmental Enquiry - Criminal prosecution vis-a-vis departmental action - Standard of Proof - Reiterated, in criminal case, proof required is proof beyond reasonable doubt, while in domestic enquiry it is proof on preponderance of probabilities.

C. Labour Law Reinstatement/Back Wages/ Arrears - Reinstatement - Loss of confidence in employee Reiterated, once employer has lost confidence in employee and bona fide loss of confidence is affirmed, reinstatement cannot be directed."

9. It is well settled that departmental enquiry is not based by strict rules of Evidence Act, but by fair play and natural justice and only total absence, but not sufficiency of evidence before Tribunal is ground for interference by court. It is also well settled that interference with the finding of fact in a departmental enquiry is permissible only when there is no material for the said conclusion or that on the materials, the conclusion cannot be that of a reasonable man. Applying such settled principles to the present case in hand, it cannot be said that this is a case of no evidence or that on the materials on record of the departmental enquiry, the conclusions arrived at by the Enquiry Officer cannot be that of a reasonable man. Even though, there is no direct evidence showing the commission of theft of diesel by the workman from the dozer he was driving, there is sufficient circumstantial evidence against the workman to conclude his involvement in commission of the theft of diesel. It is also found from record that the enquiry officer has dealt with the charge on the basis of the relevant materials on record and has arrived at the conclusion that the charge of commission of theft has been proved against

the workman. Hence, the findings of the enquiry officer cannot be said to be perverse.

10. There is no material at all on record to show that the enquiry officer was biased against the workman. Hence, there is no force in the conclusion raised by the learned advocate for the workman on that score.

11. As the departmental enquiry conducted against the workman is found to be legal and proper and in accordance with the principles of natural justice, there is no question of adducing any evidence by the party no. 1 before the Tribunal to prove the charge levelled against the workman. Hence, the submission made in this respect by the learned advocate for the workman is to be merely mentioned and rejected.

12. It is clear from the principles enunciated by the Hon'ble Apex Court as reported in (2012) 1 SCC-442 (Supra) that there is no bar for simultaneous continuance of a departmental enquiry and a criminal case against a workman. It is also found from record that in this case, the order of punishment of dismissal of the workman was passed on 29.07.2007, whereas, the order of acquittal of the workman in the criminal case was passed on 21.05.2008, much later to the order passed in the departmental enquiry. The order of punishment passed in the departmental enquiry was not based on conviction of the criminal court. The departmental enquiry held against the workman was independent of the criminal proceedings. Moreover, the charges in the departmental enquiry and the criminal proceedings and the witnesses examined in both the proceedings were not the same. Hence, the acquittal of the workman in the criminal case is of no help to the workman.

On the facts of the case, it is found that the workman was found guilty of the charge levelled against him in a properly conducted departmental enquiry and the punishment imposed against the workman is not shockingly disproportionate to the charge proved. So, there is no scope to interfere with the punishment. Hence, it is ordered:

ORDER

The action of the management of Western Coalfields Limited in dismissing Shri Laxman S/o Vithobaji Samrit from service w.e.f. 29-07-2007 is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 80—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 10/2004)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/38/2003-आईआर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 80 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 10/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfields Limited and their workman, received by the Central Government on 18-12-2012.

[No.L-22012/38/2003-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR CGIT/NGP/10/2004

Advocates for the parties are present. Advocate for petition files an application for time on the ground of illness of the petitioner. Copy served. Henced. Time is allowed as a last chance.

Call on 29-11-2012 for the cross examination of the petitioner.

Advocates for both the parties are present. The workman, Shri Nirmal Dhengre is present and files an application supported with affidavit for withdrawal of the reference and to close the same. Another application for withdrawal of the case being signed by the Secretary of the union, SKMS (AITUC) is filed. Copies of applications are served on the advocate for the management. Heard, in the interest of justice the applications are allowed. Put up later on for orders.

Presiding Officer

Party No. 1 : The Deputy Chief Engineer,
Regional Workshop,
Western Coalfields Limited,
Silewara, PO : Silewara,
Distt. Nagpur

Versus

Party No. 2 : The Secretary, Sanyukata Khadan
Mazdoor Sangh (SKMS),
44-Kingsway, Parwana Bhawan,
Nagpur, Maharashtra

ORDER

(Dated: 29th November, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their workman, Shri Nirmal Dhengre, for adjudication, as per letter No.L-22012/38/2003-IR (CM-II) dated 30-12-2003. with the following schedule:-

"Whether the action of the management of WCL through its Chief of Security in terminating the services of Shri Nirmal Dhengre, Security Guard who was working in Regional Workshop, Silewara, WCL, Nagpur w.e.f. 02-07-2001 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, S.K.M.S. (AITUC), ("the union" in short), filed the statement of claim workman, on behalf of the workman, Shri Nirmal Dhengre ("the workman" in short),

3. In the statement of claim, prayer has been made for the reinstatement of the workman with continuity, full back wages and all other consequential benefits.

4. In the written statement the party no. 1 has denied the claim of the workman and has pleaded that the workman is not entitled to any relief.

5. When the reference was fixed for cross-examination of the workman, in respect of the fairness or otherwise of the departmental enquiry, the workman has filed an application supported with an affidavit for withdrawal of the reference. Copy of the application has been served on the advocate for the management.

6. The workman wanted to withdraw the case on the ground of his continuous illness and due to other personal and family problems. The union also filed an application for permission to withdraw the reference. In the interest of natural justice, the applications for withdrawal reference are allowed. Hence, it is ordered :—

ORDER

The applications filed by the workman are allowed. The reference be treated as withdrawn. The applications filed by the workman supported with affidavit are made part of the order.

J. P. CHAND, Presiding Officer

COURT'S COPY

**BEFORE THE HONOURABLE PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, NAGPUR**

Reference Case No. CGIT/NGP/10/2004**WCL Vs. Their Workman****(Case of Sri Nirmal Sitaram Dhengre)****Humble Petition of Workman, Union to close the case as withdrawn**

The workman and union prayed that the case may kindly be closed as withdrawn.

Accordingly by the following papers are annexed herewith for kind perusal and orders :—

- (1) Affidavit dated 29-11-2012 of the workman.
- (2) Letter of General Secretary of SKMS (AITUC) W.C.L. Coal Estate Civil Lines Nagpur dtd. 24-11-2012 in original over Official Seal and signature.

Prayer : It is humbly prayed that the Honourable Tribunal be gracious to pass order for closing the case as withdrawn.

Nagpur

K. K. YADAV

29-11-2012

C.F.A.

माननीय प्रेसाइडिंग ऑफिसर**सेन्ट्रल गर्वनमेन्ट इन्डस्ट्रीयल ट्रिब्युनल कम लेबर कोर्ट****नागपुर****रेफरेन्स केस नं. सीजीआईटी/एनजीपी/10/2004**

डीप्टी चीफ इंजिनियर

रिजनल वर्कशाप,

वेस्टर्न कोलफिल्ड्स लिमिटेड,

सिलेवारी, पो. सिलेवारा, नागपुर

—पार्टी नं. 1/नियोक्ता

बनाम

उनके कर्मचारी

(श्री निर्मल ढेंगरे,

सेक्युरिटी गार्ड का केस)

—पार्टी नं. 2/कर्मचारी

मैं, निर्मल ढेंगरे पिता का नाम श्री स्वर्गीय सीताराम ढेंगरे उम्र करीब 69 साल, सेक्युरिटी गार्ड सिलेवार, रिजनल स्टोर्स, सिलेवारा का शपथ पत्र

शपथ-पत्र (Affidavit)

मैं, निर्मल ढेंगरे पुत्र स्व. सीताराम ढेंगरे, उम्र करीब 69 वर्ष, निवासी डोरली डिंगारे, थाना कलमेश्वर, तह. काटोल, जिला नागपुर शपथ लेकर बयान देता हूँ :—

1. कि मैं रिजनल वर्कशाप सिलेवार में सेक्युरिटी गार्ड के रूप में काम करता था ।
2. कि कंपनी ने हमें सेवा से दिनांक 2-7-2001 से डिसमिस कर दिया ।
3. कि यह केस इस माननीय न्यायालय के समक्ष निर्णय हेतु लंबित है ।

4. कि मैं डायबिटीज मुत्राशय संबंधी (Urological Problems) एवं अन्य जटील बिमारियों से ग्रहणीत हूँ ।

5. रोगग्रस्त होने के कारण मुझे बार बार हास्पिटल में भर्ती होना पड़ा, दवाई अभी भी चल रही है । मैं शारीरिक रूप से अक्षम हो चला हूँ ।

6. कि मेरी बीमारी के कई सर्टीफिकेट कोर्ट में भी फाईल पर है जो हमारी रोगग्रस्त होने के प्रमाण है ।

7. इसके अलावा मुझे व्यक्तिगत पारिवारिक एवं अन्य समस्याएँ भी हैं ।

8. कि उपर्युक्त अपरिहार्य कारणों से मैं स्वेच्छा से एवं होश हवास में बयान करता हूँ कि मैं अपने केस को आगे नहीं बढ़ाना चाहता हूँ और इसे बंद करने व वापस लेने का निर्णय लिया है और यह शपथ पत्र दे रहा हूँ जिसे स्वीकार किया जाए और केस को बंद कर दिया जाए अर्थात् वापस लिया ।

9. कि जनरल सेक्रेटरी संयुक्त मजदूर संघ (AITUC) श्री मोहन झा का पत्र सं. CC 37/12 दि. 24-11-2012 जो मा. कोर्ट को संबोधित है उसे अलग से फाईल कर रहा हूँ जिसमें उन्होंने भी इस केस को बंद करने की मेरी प्रार्थना को मानते हुए आपसे प्रार्थना की है ।

10. कि टंकन की गलतियों को अगर कहीं हो तो उसे कृपया क्षमा करें एवं उचित रूप से पढ़ने का आग्रह करता हूँ । शुद्ध करने की अनुमति भी दी जाए ।

नागपुर

दिनांक 29-11-2012

(निर्मल ढेंगरे)

बयानकर्ता

सत्यापन (Verification)

मैं, निर्मल ढेंगरे पिता नाम स्व. सीताराम ढेंगरे, उम्र करीब 69 वर्ष, निवासी डोरली डिंगारे, थाना कलमेश्वर, तह. नागपुर, जि. नागपुर (महाराष्ट्र) का हूँ । मैं शपथ लेकर बयान देता हूँ कि उपर्युक्त बयान मैं स्वेच्छा एवं होशहवास में दे रहा हूँ । यह शपथपत्र हमारे कहने के अनुसार ही बनाया गया है । जिसे पढ़कर मुझे हिन्दी में समझा दिया गया है । मैंने भी इसे पढ़कर समझ लिया है । इसे पढ़कर और पढ़ाकर एवं समझकर ठीक पाने पर आज दि. 29-11-2012 को दस्तखत किया ।

स्थान : नागपुर

दिनांक : 29-11-2012.

(निर्मल ढेंगरे)

बयानकर्ता

I Know the deponent

—Sd/—

C.F.A.

संयुक्त खदान मजदूर संघ

Samyukta Khadan Mazdoor Sangh (SKMS)

Regd. No. NGP/3734

AFFILIATED TO A.I.T.U.C. & I.M. W.F.

(Head Qtr. : 44, Kingsway, Parwana Bhawan, Civil Lines)

NAGPUR - 440 001.

Head Off. Add.: WCL COAL ESTATE, CIVIL LINES, NAGPUR - 440 001 (Temp)

Tel & Fax No. 0712 - 2511545

अध्यक्ष (President) M. M. Deshkar Mob.: 9423682302	कार्याध्यक्ष (Working President) R. K. Saxena Mob.: 9423565238	महासचिव (General Secretary) Mohan Jha Mob.: 9423105092
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Ref. No. NGP/SKMS/CC/37/12

Date 24-11-2012

BEFORE THE HONOURABLE PRESIDING OFFICER, CENTRAL
GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NAGPUR

REFERENCE CASE NO. CGIT/NGP/10/2004

Management of WCL Employer

Vs.

Their workmen

(Case of Sri Nirmal Sitaram Dhengre)

APPLICATION OF WORKMAN TO WITHDRAW THE CASE

It is humbly submitted:-

- (1) That the workman Nirmal Sitaram Dhengre has been suffering from diabetic problems and other complications.
- (2) That due to above he had to be admitted frequently in Hospital.
- (3) That the record of his sickness is also on Court file.
- (4) That besides above he has numerous personal and family problems.

In view of the above the workman does not want to pursue the case further. It is therefore. submitted that the case may kindly be closed as withdrawn

PRAYER:— Accordingly.

Place : Nagpur

Date : 24-11-2012

For workman

(Mohan Jha)
General Secretary
SKMS (AITUC)

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 81 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (आईडी संख्या 289/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/170/2000-आईआर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 81 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 289/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/170/2000-IR(C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 289/2005

Registered on 10-8-2005

Shri Vijay Kumar, S/o Ved Prakash,
R/o Railway Road, BSF Chowk,
Gurdaspur

...Petitioner

Versus

The District Manager,
Food Corporation of India,
District Office, Gurdaspur

...Respondent

APPEARANCES

For the workman : Sh. Sardool Singh Advocate

For the Management : Sh. N.K. Zakhmi Advocate

AWARD

Passed on 21st November, 2012

Central Government vide Notification No. L-22012/170/2000-IR(C-II) Dated 5-3-2001, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :—

“Whether the action of the management of FCI, represented by District Manager, FCI, Gurdaspur in terminating the services of Sh. Vijay Kumar, Security Guard engaged through M/s. Industrial Security and Allied Services and engaged in watching of building, w.e.f. 6-6-1998 is legal and justified? If not, to what relief the workman is entitled?”

As per claim statement the workman had been appointed as Security Guard/Watchman in 1993 on daily wages by respondent No. 2 i.e. Industrial Security and Allied Services through its partner Subedar Joginder Singh. He worked till 6-6-1998 when his services were terminated by respondent No. 2 without any notice, notice pay, inquiry and retrenchment compensation. He has challenged his termination and said that while terminating his service persons junior to him were retained. He has claimed his reinstatement with continuity of service and full back wages.

The claim was contested by the management and it was said that the workman was not in the employment of FCI. There was no privity of contract between the FCI and the workman. The workman was the employee of the contractor and not of the Corporation and he had been deputed by the contractor for the duties of watch and ward. His services were not terminated by the FCI. The claim of the workman has no merits.

Workman filed a replication to say that he had been engaged by the FCI and the contractor both and FCI was the principal employer. FCI deducted the Provident Fund from the salary of the workman and is responsible for his illegal termination. He has no knowledge of any contract.

In evidence the workman examined himself and on behalf of the management evidence of Abhishek Kumar Yadav, Area Manager was recorded. Parties relied on certain documents also.

None appeared on behalf of the workman to argue the case despite several adjournments given for the purpose. I heard the learned counsel for the management and perused the evidence on record.

At the very outset it may be mentioned that in the claim statement itself the workman had alleged to be an

appointee of the contractor. Though subsequently in his replication he has said that he had been engaged jointly by FCI and the contractor but he has no appointment letter or termination letter issued by the FCI. He has filed certain attendance sheets but had admitted in his statement that they do not bear the signature of any official of the FCI. Obviously there is no relationship of employer and employee between the FCI and the workman. The workman was not the employee of the FCI and his services were not terminated by the FCI. The question of adjudging the action of the FCI in terminating the services of the workman does not arise. The reference is answered against the workman. Let two copies of the award be sent to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 82.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईस्ट कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 159/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/238/1999-आईआर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 82.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 159/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/238/1999-IR(C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : SRI JAYANTA KUMAR SEN, Presiding Officer

REFERENCE No. 159 of 1999

Parties : Industrial Dispute between the

Management of Chinakuri 3 Pit Colliery
of M/s. ECL.

Vrs.

Their Workman.

Representative :

For the management : Sri P.K. Das, Advocate

For the union (Workman) : None

Industry : Coal

State : West Bengal

Dated the 27-11-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Ministry of labour vide its letter No. L-22012/238/99-IR(CM-II) dated 9-9-1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Chinakuri 3 Pit Colliery in denying regularisation of Sh. Kishor Prasad Nunia and 10 other underground Loaders (list enclosed) in different Time Rated Categories is justified ? If not, to what relief the concerned workmen are entitled to?”

On receipt of the Order No. L-22012/238/99-IR(CM-II) dated 9-9-99 of the above mentioned reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 159 of 1999 was registered on 23-9-1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

The union is neither appearing nor taking any step since long. It seems that the union/workman are not at all interested to proceed with case further. Since the case is too old in the year 1999 and the union/workman are not taking any step since long. The case is closed and accordingly a ‘No Dispute’ Award is passed.

ORDER

Let an award be and same is passed in terms of the above finding as No Dispute existing. Send the two copies of the award to the Ministry of Labour and Employment, Government of India, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 83 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईस्ट कोलफील्डस लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 01/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/399/1994-आईआर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 83 — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/399/1994-IR(C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

Present : SRI JAYANTA KUMAR SEN, Presiding Officer

REFERENCE No. 01 of 1995

Parties : The management of North Searsole Colly., M/s. ECL, Burdwan

Vrs.

Shri C. S. Banerjee, Jt. Gen. Secy., CMU,
Ukhra (WB)

Representative :

For the management : None

For the union (Workman) : None

Industry : Coal

State : West Bengal

Dated the 4th December, 2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Ministry of Labour vide its Order No. L-22012/399/94-IR(C-II) dated 30-12-94 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of North Searsole Colliery of Kunustoria Area of ECL in dismissing Shri Judhistir Dakua, Underground Loader from the services of the Colliery vide Dismissal Order No. A. KNT/P & IR/26D/13639 dated 28-03-92 was legal and justified? If not, to what relief the concerned workman is entitled to?"

Having received the Order of Letter No. L-22012/399/94-IR(C-II) dated 30-12-94 of the above said reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 01 of 1995 was registered on 10-01-95 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record it is found that neither the Union nor the workman taking any step since long. It seems that they have now no interest in this case and do not want to proceed further. Since the case is too old and the workman neither appearing nor taking any step since long, it is not reasonable to continue the case further. As such the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Government of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 84.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्ट कोलफील्ड्स लिमिटेड के प्रबंधन के संबंध में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ संख्या 61/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/324/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 84.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ECL, and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/324/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

SRI JAYANTA KUMAR SEN, Presiding Officer

Reference No. 61 of 2005

PARTIES:

The management of Ratibati Colly. of M/s. ECL.,
Burdwan

VS.

The Gen. Secy., KMC, Asansol (WB).

REPRESENTATIVES:

For the Management : None

For the union (Workman) : Sri S. K. Pandey,
Ld. Representative

Industry : Coal State : West Bengal

Dated the : 29-11-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India

through the Ministry of Labour vide its letter No. L-22012/324/2004-IR (CM-II) dated 21-7-2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Ratibati Colliery under Satgram Area of M/s. Eastern Coalfields Limited in dismissing Sh. Sukhan Bhuiya, U.G Loader from services w.e.f. 4-7-2000 is legal and justified? If not, to what relief Sh. Sukhan Bhuiya is entitled?”

Having received the Order of letter No. L-22012/324/2004-IR (CM-II) dated 21-7-2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 61 of 2005 was registered on 17-8-05 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record it is found that a copy of memorandum of settlement has been filed which shows that the case has been amicably settled between both the parties. Since the case has already been settled, the case is closed and accordingly an order of “No Dispute” is hereby passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 85.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्ट कोलफील्ड्स लिमिटेड के प्रबंधन के संबंध में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ संख्या 45/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/163/1993-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 85.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 45/1993) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ECL, and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/163/1993-IR (C-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

SRI JAYANTA KUMER SEN, Presiding Officer

Reference No. 45 of 1993

PARTIES:

Industrial Dispute between the management of
Baramundia Colliery of M/s. ECL.

Vrs

Their Workman

REPRESENTATIVES:

For the Management : Sri P. K. Das,
Advocate

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated the : 22-11-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/163/1993-IR (C-II) dated 1-9-1993 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Baramundia Colliery of ECL, P.O. Kanyapur, Distt. Burdwan (W.B.) in superannuating the workmen Shri Jhapla Bouri and Shri Jagai Bouri w.e.f. 1-7-92 without affording them the opportunity for determination of their apparent age by Apex Medical Board is legal and justified ? If not, to what relief the concerned workmen are entitled to ?"

On receipt of the Order No. L-22012/163/93-IR (C-II) dated 1-9-93 of the above mentioned reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 45 of 1993

was registered on 10-9-1993 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

The workman is neither appearing nor taking any step since long despite registered notice. Several opportunities were given but to no effect. It seems that workmen are now no more interested to proceed with the case further. The case is too old I think it will not be reasonable to continue the case further. As such the case is closed and accordingly a 'No Dispute' Award is passed.

ORDER

Let an award be and the same is passed in terms of the above finding as No Dispute existing. Send the two copies of the award to the Ministry of Labour & Employment, Govt. of India, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 86.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्ट कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ संख्या 20/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/85/1996-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 86.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ECL, and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/85/1996-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

SRI JAYANTA KUMER SEN, Presiding Officer

Reference No. 20 of 1997

PARTIES:Industrial Dispute between the Management of
Bhanora Colliery of M/s. ECL.

Vrs.

Their Workman

REPRESENTATIVES:For the Management : Sri P. K. Das,
Advocate

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated the : 22-11-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/85/1996-IR (C-II) dated 14-3-1997 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Bhanora Colliery of ECL in denying employment to Smt. Basanti Nunia widowed daughter-in-law of Late Smt. Anorwa Nunia as per clause 9.4.2 of NCWA-IV is legal and justified? If not, what relief the concerned dependent is entitled to?”

On receipt of the Order No. L-22012/85/1996-IR (C-II) dated 14-3-97 of the above mentioned reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 20 of 1997 was registered on 26-3-1997 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

The workman is neither appearing nor taking any step since 2009. It seems that the workman has lost his interest in this case and does not want to proceed with the case further. Since the case is too old in the year 1997 and the workman not at all interested to proceed with the case

further, it will not be reasonable to continue the case. As such the case is closed and accordingly a ‘No Dispute’ Award is passed.

ORDER

Let an award be and same is passed in terms of the above finding as No Dispute existing. Send the two copies of the award to the Ministry of Labour & Employment, Govt. of India, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 87.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्ट कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ संख्या 28/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/398/1999-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 87.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/398/1999-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

PRESENT:

SRI JAYANTA KUMER SEN, Presiding Officer

Reference No. 28 of 2000

PARTIES:The Management of Chora Colliery of M/s. ECL,
Burdwan

Vrs.

The Gen. Secy., UCMU (INTUC), Ukhra, Burdwan.

REPRESENTATIVES:

For the Management : None

For the union (Workman) : Rajesh Bouri,
workman

Industry : Coal State : West Bengal

Dated the : 07-11-12
01-04-10**AWARD**

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/398/99-I.R. (CM-II) dated 29-2-2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Chora Colliery, M/s. ECL in dismissing Sh. Rajesh Bouri, Underground Loader from service is legal and justified ? If not, to what relief the workman is entitled ?”

Having received the Order of letter No. L-22012/398/99-I.R. (CM-II) dated 29-2-2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 28 of 2000 was registered on 13-3-2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri Rajesh Bouri, the concerned workman, appears physically and files a petition praying that the case may be closed as he is going to be reinstated by the management. Since the matter is settled, the case is closed and accordingly an order of “No Dispute” is hereby passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

Sd/-

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2012

का.आ. 88.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्ट कोलफील्ड्स लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ संख्या 21/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/599/1994-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 18th December, 2012

S.O. 88.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ECL, and their workman, which was received by the Central Government on 18-12-2012.

[No. L-22012/599/1994-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

PRESENT:

SRI JAYANTA KUMAR SEN, Presiding Officer

Reference No. 21 of 1995

PARTIES:The Management of Kalipahari (R) Colliery of
M/s. ECL, Burdwan

Vs.

The Jt. Gen. Secy., CMU (INTUC), Ukhra, Burdwan.

REPRESENTATIVES:For the Management : Sri P. K. Das,
Ld. Advocate

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated : 6-11-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/599/94-IR (C-II) dated 1-6-95 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Kalipahari (R) Colliery under Sripur Area of ECL in dismissing Shri Sukhdev Bouri, Winding Engine Khalasi, w.e.f. 28-10-88 as the charges vide Charge sheet No. AGT/KPH/87/1167 dated 17-7-87 is legal and justified? If not, to what relief the workman is entitled to?”

Having received the Order No. L-22012/599/94-I.R. (C-II) dated 1-6-95 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 21 of 1995 was registered on 12-6-95 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, I find that the Union/workmen neither appearing nor taking any step since long despite registered notices. Since, the case is too old and the Union/workman is showing no interest to proceed with the case. I find no reason to continue the case. As such the case is closed and accordingly an order of “No Dispute” is hereby passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 89.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमिशनर, एम. सी. डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संख्या 66/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था।

[सं. एल-42011/212/2011-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 19th December, 2012

S.O. 89.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi, as shown in the Annexure, in the Industrial Dispute between the Commissioner, MCD

and their workman, which was received by the Central Government on 12-12-2012.

[No. L-42011/212/2011-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1,
KARKARDOOMA COURTS
COMPLEX, DELHI**

I. D. No. 66/2012

Shri Ram Karan

Through the General Secretary,
Municipal Employees Union,
Aggarwal Bhawan, G. T. Road,
Tis Hazari, Delhi-54

... Workman

Versus

The Commissioner,
Municipal Corporation of Delhi (MCD),
Town Hall, Chandni Chowk,
Delhi-110006

... Management

AWARD

A rest reliever Chowkidar was engaged by Municipal Corporation of Delhi (in short the Corporation) in its primary school at Hamirpur, as and when regular chowkidar happened to be on leave. He was engaged for intermittent period from time to time. He worked with the Corporation for a period of 369 days from May 1989 to May 2004. When exigency to avail his services did not last, his services were not availed. He took act of non engagement with effect from 20-11-1997 as termination of his services. He raised a demand on the Corporation for reinstatement, which demand was not conceded to. Ultimately, an industrial dispute was raised by him before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings failed. The Conciliation Officer submitted his failure report to the appropriate Government. On consideration of that report, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42011/212/2011-IR(DU) dated 12-3-2012, with following terms:

“Whether (act of) the management of Municipal Corporation of Delhi (MCD) in terminating the services of Shri Ram Karan, S/o Shri Lakhmi Chand with effect from 20-11-2007 is legal and just? What relief the workman is entitled to and from which date?”

2. Claim statement was filed by the rest reliever chowkidar, namely, Shri Ram Karan, pleading therein that

he was employed by the Corporation as Chowkidar on 11-12-1989. He was treated as casual/muster roll worker. The Corporation gave various artificial breaks in his service and treated him on leave vacancy. He was taken on job sometimes for 25 days and sometimes for 20 days in a month and so on. His services were terminated by the Corporation with effect from 20-11-2007. He projects that he was working against regular and permanent job, which still continues with the Corporation. He completed more than 240 days of continuous employment with the Corporation and as such, termination of his services is illegal, since no notice or pay in lieu thereof and retrenchment compensation was given to him. Termination of his service amounts to unfair labour practice. After termination of his services, fresh hand was engaged by the Corporation. He claims that an award of reinstatement in service with continuity and consequential benefits, may be passed in his favour.

3. Notice of the claim statement was sent to the Corporation by registered post on 22-5-2012, calling upon it to file its written statement on 15-6-2012. Neither postal article was received back nor anyone appeared on behalf of the Corporation. Further notice was sent to the Corporation by registered post on 3-8-2012, to offer an opportunity to file its written statement on 22-8-2012. Postal article was received back undelivered with the remarks "refused". These facts make it apparent that the Corporation had knowledge of the fact that an industrial dispute pends adjudication before this Tribunal, wherein the Corporation was a party. Even otherwise, copy of reference order was also transmitted it by the appropriate Government, which fact is apparent out of order dated 12-3-2012. All these circumstances make it apparent that the Corporation had an opportunity to file its written statement, but opted not to file it. Consequently, the Corporation was proceeded ex-parte, vide order dated 22-8-2012.

4. Claimant tendered his affidavit as evidence, besides documents, to support his claim.

5. Arguments were heard at the bar. Shri Surender Bhardwaj, authorized representative, advanced arguments on behalf of the claimant. None came forward on behalf of the Corporation to present facts. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

6. In his affidavit, tendered as evidence, claimant swears that he joined services of the Corporation as chowkidar on 11-12-1989. He was treated as casual worker and paid wages as fixed and revised from time to time under the Minimum Wages Act. Various artificial breaks were given in his services and he was treated against leave vacancy. Sometimes he was taken on the job for 25 days while sometimes for 20 days in a month and so on. He

worked with the Corporation till 20-11-2007. Thereafter he was not engaged on one pretext or the other.

7. Claimant had proved various orders of his engagement by the Corporation as Ex. WW1/4 to Ex. WW1/40 and Ex. WW1/46 to Ex. WW1/55. Documents proved by the claimant, explain and clarify facts unfolded by him in his affidavit, tendered as evidence. When these documents are closely perused, it came to light that from time to time office orders were issued by the Corporation relating to engagement of the claimant as rest reliever. Circulars were also issued in his favour, projecting the period for which he worked as rest-reliever on particular spells. The claimant had not proved any document which may show his engagement after May 2004. He simply narrated self serving words in his affidavit when he testified that he worked with the Corporation till 20-11-2007. Not even a single office order/document was placed over record by the claimant to project that he worked with the Corporation as rest reliever after May 2004 till November 2007. For want of cogent evidence, I am constrained to conclude that the claimant has not been able to establish that he worked at all with the Corporation as a rest reliever after May 2004 till 20-11-2007.

8. Whether the claimant had been able to establish that he rendered continuous service for 240 days in any calendar year. For an answer, definition of the phrase "continuous service" is to be construed. "Continuous Service" has been defined by section 25B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service". Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer, if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment.

9. Documents proved by the claimant, highlight that he worked with the Corporation for intermittent spells. As emerge out of documents proved by the claimant, he worked for 2 days in May 2004, 3 days in May 2004 to April 2003. He worked for a day only from May 2002 to April 2001. He worked for 145 days from May 2000 to April 1999, 10 days from May 1999 to April 1998 and 6 days from May 1998 to April 1997. Again he worked for 39 days from May 1995 to April 1994, 30 days from May 1994 to April 1993, 23 days from May 1993 to April 1992, 13 days from May 1992 to April 1991, 75 days from May 1991 to April 1990 and 21 days from May 1990 to April 1989. In none of 12 calendar months, referred above, he worked continuously for 240 days.

10. At the cost of repetition, it is said that the claimant has not been to establish that he served the Corporation for a period of 240 days in preceding 12 months from the date of his alleged termination. In such a situation, it is apparent that neither provision of section 25F is applicable nor he can avail relief under the provisions of Sections 25G and 25H of the Act, since he was rest reliever chowkidar. There is no illegality in the action of the Corporation when the claimant was not engaged any further. Claimant is not entitled to any relief. His claim is liable to be dismissed. Accordingly, an award is passed in favour of the Corporation and against the claimant. It is sent to the appropriate Government for publication.

Dated : 10-10-2012 Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 90.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जर्नल मैनेजर, टेलीकाम डिपार्टमेंट, गांधी भवन, लखनऊ के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या-39/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था।

[सं. एल-40012/22/2008-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 19th December, 2012

S.O. 90.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the General Manager, Telecom Deptt., Gandhi Bhawan, Lucknow and their workman, which was received by the Central Government on 12-12-2012.

[No. L-40012/22/2008-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

L. D. No. 39/2008

BETWEEN :

Sri Rakesh Kumar Balmiki,
S/o Late Motilal,
R/o 5, Shahnajaf Road,
Bhedi Wali Kothi,
Hazratganj,
Lucknow

AND

The General Manager,
Telecom Deptt.,
O/o General Manager,
Gandhi Bhawan,
Kaisarbagh,
Lucknow-226001

AWARD

1. By order No. L-40012/22/2008-IR (DU) dated 9-7-2008, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Rakesh Kumar Balmiki S/o Late Motilal R/o 5, Shahnajaf Road, Bhedi Wali Kothi, Lucknow for adjudication.

2. The reference under adjudication is :

“Whether the action of the General Manager, Bharat Sanchar Nigam Limited, Lucknow in terminating the services of their workman Sri Rakesh Kumar Balmiki w.e.f. 3-12-2006 is Legal and Justified ? If not, to what relief the workman is entitled to ?”

3. The case of the workman, Rakesh Kumar Balmiki, in brief, is that he was appointed as Sweeper in the year 1993 and again he was appointed on 1-7-2000 by Dy. Divisional Engineer, Phones, Central Kaisarbagh, Lucknow as full time Sweeper. It is alleged by the workman that he had signed on attendance register every day and payment was made on the basis of register. The workman alleged that he applied TSM facility on 14-1-2002 but management denied the same. It has been alleged by the workman that he had completed 240 days in a calendar year but management has not given temporary status and verbally terminated his services in violation to the provisions contained in Section 25 F of the I.D. Act, 1947.

Accordingly, the workman has prayed that his verbally termination order be set aside and he be reinstated with consequential benefits including back wages.

4. The opposite party filed its written statement, denying the claim of the workman; wherein it has been submitted that the service of the involved workman were being hired on, "as-on-required" basis, between 1-7-2000 to 30-6-2001. He performed his work as a daily wager, with breaks during the above said period and further he never completed 240 days of regular, in any calander year. It has been submitted that workman is not entitled for regular work or post, as he was hired as daily wager as on required basis.

5. The workman has filed its rejoinder; wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim. The rejoinder was filed by workman on 24-7-2009 thereafter case was fixed for filing documents and evidence of workman when the evidence and documents were not filed by workman on 18-9-2009, 23-10-2009, 11-12-2009, 5-2-2010, 18-3-2010, 26-5-2010, 25-6-2010, 11-8-2010, 23-9-2010, 16-11-2010, 24-12-2010, 21-1-2011, 4-3-2011, 2-6-2011, the case was fixed for opposite party evidence. However, on 22-7-2011 only the photo copy of documents filed through W-11. But mere filing of photo copies of documents is not sufficient since those documents were not proved as per law. Neither the workman appear in the witness box nor any affidavit in support of claim has been filed by him even though repeatedly he was given time but he failed to file evidence in support of his case. Consequently case was fixed for opposite party evidence if any. On 20-1-2012 W-13 application to recall the order dated 15-9-2011 which was allowed in the interest of justice on payment of cost Rs. 500 and 11-6-2012 was fixed for workman evidence but again workman failed to file evidence on 11-6-2012, 28-6-2012, 3-9-2012 and 29-10-2012. Consequently case was reserved for award considering the long pendency of the case and reluctance of the workman to pursue the case.

6. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer vs S. T. Hadimani Hon'ble Apex Court has observed as under :

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was

then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. filing of affidavit it is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for the period was produced by the workman. On this ground alone, the award is liable to be set aside."

7. In the present case the workman has stated that he has worked continuously for 240 days but has not produced sufficient documents and evidence in support of his case.

8. Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

9. Accordingly, the reference is adjudicated against the workman Sri Rakesh Kumar Balmiki and he is not entitled to any relief.

10. Award as above.

Lucknow,
12-11-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 91.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जनरल मैनेजर, बी.एस.एन.एल., केरला सर्किल, त्रिवेन्द्रम के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आरनाकुलम के पंचाट (संदर्भ संख्या 8/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था।

[सं. एल-40/12/26/2009-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 19th December, 2012

S.O. 91.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, now as shown in the Annexure, in the

Industrial Dispute between the Chief General Manager, BSNL, Kerala Circle, Trivandrum and their workman, which was received by the Central Government on 12-12-2012.

[No. L-40012/26/2009-IR (DU)]
SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D. Sreevallabhan, B.Sc., LL.B.,
Presiding Officer

(Thursday the 22nd day of November, 2012)

L.R. 8/2010

Union : The District Secretary,
BSNL Casual Contract Labours
Union, Palakkad District Committee,
Palakkad.

By Adv. Shri M.R. Sudheendran.

Management : The Chief General Manager,
BSNL, Kerala Circle,
Trivandrum.

By Adv. Shri Saji Varghese.

This case coming up for final hearing on 1-11-2012 and this Tribunal-cum-Labour Court on 22-11-2012 passed the following :

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Government of India, Ministry of Labour by Order No. L-40012/26/2009-IR(DU) dated 30-11-2009 referred the following industrial dispute to this tribunal for adjudication :

“Whether the action of the management of Chief General Manager, BSNL, Kerala Circle, Trivandrum, in terminating the services of Shri V.K. Kailasan w.e.f. 12-6-2008 is legal and justified? If not, what relief the workman is entitled to ?”

2. BSNL Casual Contract Labours Union which raised the industrial dispute filed claim statement after appearance before this tribunal with the allegations that the workman had been continuously working as a casual labourer in BSNL Palakkad SSA since 1986. He was initially engaged by the Department of Telecommunications which was later transformed to BSNL. He was engaged for cable works under the cable splicers of that Department. There was no uniform procedure in the matter of engaging casual labourers in the Department. The Central Administrative

Tribunal, Ernakulam Bench by order dated 20-12-1994 in O.A. 1402/93 and connected cases had given direction to the department to maintain a panel of casual employees for engagement for the various works and the panel was directed to be drawn up on sub divisional basis by including all the casual employees already engaged for that purpose. Pursuant to that order applications were invited from casual labourers for empanelment through advertisement in newspapers. The workman had also submitted application enclosing all the relevant document. But it was rejected on the ground that he had not approached the department for reengagement within three years. Afterwards repeated requests were made by him for empanelment pointing out the empanelment of a similarly placed workman, Jabbar. But he has not been included in the list so far. There exists employer-employee relationship between the BSNL and the workman. He was continuously working under the management as full time casual labourer under the supervision and directions of the departmental officials from 1986. The work is of perennial nature. He had worked for more than 240 days in every year of his engagement along with other workmen. He had filed WP(C) before the Hon'ble High Court of Kerala wherein they were directed to move the appropriate authorities for adjudication under the Labour Laws. His service was orally terminated w.e.f. 29-6-2009 without notice and without following the procedure established by law. No compensation was paid to him. The termination of his service pending legal proceedings is illegal and unjustifiable. Hence he prays for directing the management to reinstate him in service granting temporary status and to regularize him in service with retrospective effect and pro-rata wages as applicable to Group 'D' employees.

3. The contentions put forward by the management in the written statement are that the union which raised the dispute is not a union of the workmen of BSNL and hence the reference is incompetent and invalid. The Department of Telecom was a department of the Government of India discharging sovereign functions and hence it is not an industry as defined in the Industrial Disputes Act. BSNL was formed on 1-10-2000 and it is a company owned by the Government of India. The workman was not engaged at any time as casual labour in the Telecom Department or the BSNL. The engagement of casual labourers was prohibited from 1985 and it continued even after the formation of BSNL. The workman did not meet the eligibility criteria for regularisation as per the scheme formulated by the Department of Telecom, which was a one time affair, and therefore his application was rejected. The workman is not similarly situated like Jabbar. He had not worked for not more than 240 days in an year. The work is not of perennial nature. He has not worked as a casual labour under the BSNL and he was not paid any wages. He is not entitled for regularisation or to the wages of Group 'D' employees. As he was not engaged there is no question of

his termination w.e.f. 29-6-2009. He is not entitled for reinstatement on regularisation and to any other relief.

4. Union filed rejoinder denying the contentions put forward by the management and also stating that as the industrial dispute is with regard to termination of service it is not necessary that the union has to espouse the dispute.

5. For the purpose of deciding this reference evidence both oral and documentary was adduced by the Union and the management and it consists of the depositions of WW1, MW1 and Exts. W1 to W3 and Exts. M1 to M5.

6. The points for determination are :

1. Whether the workman was engaged by the Telecom Department or BSNL at any time as a casual labourers ?
2. Whether his service was terminated by the BSNL and if so whether the termination is legal and justified?
3. Reliefs and costs.

7. **Points No. 1 :** As it is the specific contention of the management that the workman was not engaged at any time as a casual labourers the burden is on the workman to prove his case as to the engagement by the management. It is specifically alleged by him that he had been working as a casual labourers under the Telecom Department from 1986 and later continued to be so under the BSNL after its formation on 1-10-2000. In order to prove it the workman has given evidence as WW1 and also produced Exts. W1 and W2 certificates. In his proof affidavit there is the specific averment that he was continuously working as a casual labourers from 1986 under the cable splicers in the Palakkad SSA of the Telecom Department which is now the BSNL. Ext. W1 is stated to be the certificate issued by the SDOT, Palakkad showing his engagement for 130 days and Ext. W2 to be the certificate issued by SDET, Chittur as to his work experience. Challenge is made by the management as to the genuineness of those two certificates during his cross examination by making the suggestion that those are fabricated documents. Hence it is to be considered whether those certificates can be relied on to prove his case. Both Exts. W1 and W2 bear the signature and office seal. Ext. W1 does not show the date of issue. Ext. W2 is dated 29-4-1999. Ext. W1 contains the office seal of Sub Divisional Officer Telephones, Palakkad and Ext. W2 contains the seal of Sub-Divisional Engineer Telecom, Chittur. There is no mention of the name of the person who issued the certificates in Exts. W1 & W2. During his cross examination WW1 has stated that Ext. W1 was issued in the year 1986 by the then Sub-Divisional Officer Sri. Parameswaran and Ext. W2 was issued during 1987-88 by the cable splicer Sri. Velu. But in the affidavit filed in support of I.A. 98/2012 it is averred that Ext. W1 was signed by Balakrishnan and Ext. W2 by Varier. It is stated to be correct by him later

during his cross examination. There is inconsistency in the version given by WW1 as to the persons who signed Exts. W1 & W2 certificates. In order to have a comparison of the signatures in those certificates he has produced Exts. W4 & W5. Ext. W4 is Course Certificate issued by Sub Divisional Engineer (Training), Palakkad on 30-10-1998 to Shri K. Haridas. Ext. W5 is copy of an Order dated 4th February, 1988 issued by the Sub Divisional Officer, Telephones, Palaghat. WW1 has stated that Exts. W1 & W5 were signed by the same person and likewise Exts. W2 & W4 can be said to be signed by the same person on comparison of signatures. The genuineness of Exts. W4 & W5 is also challenged by the management. The name of the persons who signed Exts. W4 and W5 are not given in it. The persons who issued Exts. W1 & W2 are stated to be alive and WW1 has stated that there is no difficulty to examine them as witnesses in this case. But they were not examined in this case to prove that Exts. W1 & W2 were issued by them. They ought to have been examined to prove the issuance of Exts. W1 & W2 in view of the inconsistent versions given by WW1 during his cross examination as to the persons who issued those certificates. If there was no such inconsistency some reliance could have been placed on those certificates to prove his engagement. On a mere comparison of the signatures on Ext. W1 with Ext. W5 and Ext. W2 with Ext. W4 it cannot be definitely said that those certificates were issued by one and the same person. The non examination of the persons who issued the certificates is of much significance in view of the different versions given by WW1 about them. Hence no reliance can be placed on Exts. W1 & W2 to prove his engagement by the management.

8. There is no reliable evidence in this case to prove that he was engaged by the management as stated by him. It is not in dispute that he had submitted an application for regularisation pursuant to the order of the Central Administrative Tribunal, Ernakulam Bench. That application was rejected by the management. According to the union the application was rejected on the ground that he had not approached the department for reengagement within three years. It is contended by the management in the written statement that his application was rejected since he did not meet the eligibility criteria for regularisation as per the scheme formulated by the Department of Telecom. The copy of the order rejecting the application is not produced in this case to know the reason for the rejection of that application. Merely for the reason that an application was filed for regularisation it cannot be said that he was engaged by the management as a casual mazdoor. He has failed to prove by adducing any reliable evidence to prove that he was engaged as a casual labour from 1986 onwards. Ext. M1 was produced by the management to satisfy that there was a ban for the engagement of casual mazdoors after 22-6-1988. From Ext. M1 it can be seen that the BSNL was engaging casual mazdoors. But it was completely

prohibited from 12-2-1999. Ext. M1 was issued to put an end to the engagement of casual mazdoors. Hence his case that he was continuously employed in the BSNL as casual mazdoor from 1986 till 2009 or 2010 cannot as such be accepted as true. Exts. M2 to M5 were produced to prove that contractors were engaged for carrying out the cable works. There is no plea with regard to the engagement of contractors in the written statement. It is also not possible to hold that there was no engagement of casual workers in the BSNL based on Exts. M2 to M5. Whatever it be, the workman has failed to prove that he was engaged continuously from 1986 onwards till his termination on 29-6-2009 as alleged in the claim statement.

9. **Point No. 2 :** The reference is to consider the legality and justifiability of the termination of services of the workman w.e.f. 12-6-2008. In the claim statement it is alleged that his termination from services was w.e.f. 29-6-2009. In the proof affidavit of WW1 it is averred that he was terminated w.e.f. 12-6-2010. During his cross examination also it was asserted by him that his termination was w.e.f. 12-6-2010. There is no consistent case even with regard to the termination of his services by the management.

10. The management has got a case that BSNL is not an industry coming within the definition of industry in the Industrial Disputes Act. It is not sustainable as it is a public sector undertaking engaged in a commercial activity and is not discharging any of the sovereign functions of the State. In the decision reported in General Manager, Telecom Vs. A Srinivasa Rao and Others (1997) 8 Supreme Court Cases 767 it was held that the Telecom Department of Union of India is an industry coming within the definition of Industry in Section 2(j) of the Industrial Disputes Act. There is no force in the contention that BSNL is not an industry.

11. In order to prove that the retrenchment is illegal the workman has to prove that he was engaged as a casual mazdoor for a period of 240 days in a year. There is absolutely no evidence except the averment in the proof affidavit of WW1 to prove that he was engaged for a period of 240 days in an year. That itself is not sufficient to discharge the burden cast upon him to prove it in view of the decision reported in Rajasthan State Ganganagar Mills Limited Vs. State of Rajasthan and another (2004) 8 Supreme Court Cases 161. There is no reliable evidence in this case to prove that he had worked for a period of more than 240 days in an year at any time.

12. **Point No. 3 :** There is no case for the workman that his services were terminated w.e.f. 12-6-2008. He has failed to prove the engagement by the BSNL. Even if he was engaged at any time by the BSNL and his services were terminated it cannot be held that the termination was not legal and justifiable in the absence of proof of engagement for 240 days in an year. Hence I find that even

if there was termination of his services by the BSNL w.e.f. 2-6-2008 it is legal and justified.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 22nd day of November, 2012.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the Union

WW1 – Kailasan, S/o Kuttykrishnan, S.K. Bhavan, Vennakkara, Puthuperiyaram P.O., Malampuzha.

Witness for the Management

MW1 – K. Balakrishnan, Assistant General Manager (Planning), Office of the General Manager, Telecom, Palakkad.

Exhibits for the Union

W1 Employment Certificate issued by the SDOT, Palghat to the workman.

W2 Experience Certificate dated 29-4-1999 issued by Sub Divisional Engineer, Telephones, Chittur to the workman.

W3 Judgment dated 6th July, 2007 in WP(C) No. 32694 of 2005 (P) of the Hon'ble High Court of Kerala.

Exhibits for the Management

M1 Photocopy of the communication No. TFC/ST 11/63-1/2000/Rlgs/Pt. 1 dated 25-3-2003 of General Manager (TS), O/O Chief General Manager, Telecom, Kerala Circle, Thiruvananthapuram.

M2 Photocopy of the Agreement dated 14-1-2003 entered into between BSNL and Contractor Sri K. A. Jaleel.

M3 Photocopy of the Agreement dated 29-11-2002 entered into between BSNL and Contractor Sri Viju Joseph.

M4 Photocopy of the Agreement dated 24-4-2006 entered into between BSNL and Contractor Sri E.K. Moideenkoya.

M5 Photocopy of the Agreement dated 24-4-2006 entered into between BSNL and Contractor Sri Jolly Joseph.

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 92.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स टोटल आयल इंडिया प्रा. लिमिटेड, मुम्बई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 39/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-30011/31/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 19th December, 2012

S.O. 92.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2012) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Total Oil (I) Pvt. Ltd. (Mumbai) and their workman, which was received by the Central Government on 14-12-2012.

[No. L-30011/31/2012-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/39 of 2012

Employers in Relation to the Management of total Oil India Pvt. Ltd.

The Vice-President,
M/s. Total Oil (I) Pvt. Ltd.,
Plot No. A-26,
TTC Industrial Area,
MIDC Mahape,
P.O. Box No. 10,
Millenium Business park,
Navi Mumbai-400 710

AND

Their Workmen.

The Vice-President,
Total Oil Employees Union,
C/o. Shri Yashwant Patil,
House No. 560,
Mahape, Post MBP,
Navi Mumbai.

APPEARANCES:

For the Employer : Mrs. N. R. Patankar,
Advocate

For the Workmen : Mr. Suresh Patil,
Representative

Mumbai dated the 22nd October, 2012.

AWARD

1 The Government of India, Ministry of Labour and Employment by its Order No. L-30011/31/2012-IR (M), dated 17-8-2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the demand of the demands of Total Oil Employees Union, Navi Mumbai such as increase in their basic salary, fixed dearness allowance, HRA, Leave Travel Allowance, Medical Allowance-cum-Medical reimbursement, Travelling/Conveyance Allowance, Education allowance, Washing allowance, attendance bonus, hospitalization Scheme, Canteen facility, trip subsidy, Diwali gift, gratuity @ 30/days, bonus/ex-gratia amount, recruitment promotion, various kinds of leave, various kinds of loan, advances etc., as per charter of demands dated 6-12-2011 against the management of M/s. Total Oil India Pvt. Ltd., Navi Mumbai are legal, just and proper? If so, to what relief the concerned workmen are entitled to? And whether the strike resorted by the members of Total Oil Employees Union in the establishment of M/s. Total Oil India Pvt. Ltd., Navi Mumbai during the pendency of conciliation proceedings is legal?"

2. After receipt of the reference, notices were sent to both the parties. In response to the notice, second party filed application dt. 10-9-2012 along with a copy of settlement dated 6-9-2012. Today when the matter was fixed for filing Statement of Claim by the Union, both the parties appeared and filed a joint purshis (Ex-7) starting that the Charter of Demands dt. 6-12-2011 raised by Second party and the other then pending and incidental issues have been settled between both the parties by signing settlement dated 6-9-2012. Therefore, both the parties prayed to dispose of the reference. Hence, I pass the following order:

ORDER

In view of purshis Ex-7 filed by both the parties, reference stands dismissed as settled.

Date: 22nd October, 2012

K. B. KATAKE, Presiding Officer

Ex. No. 7

(Vikrant Tungare)

(Dinesh Singh)

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
NO. 2, AT MUMBAI**

Reference No. CGIT-2/39 of 2012

BETWEEN

Employers in Relation to the Management of M/s.
Total Oil India Pvt. Ltd. . . . First Party

AND

Their Workmen. . . . Second Party

May it please the Hon'ble Tribunal :

The above Reference is in respect of the demands contained in the Charter of Demands dated 6-12-2011 raised by Total Oil Employees' Union as also other then pending and incidental issues between the parties. In respect of the said Charter of Demands and other then pending and incidental issues the parties have settled the same by signing Settlement dated 6-9-2012 under the provisions of Section 2(P) read with Section 18(1) of the Industrial Disputes Act, 1947. By the said Settlement it has been agreed upon by the said Union and the workmen that during the operation of the Settlement the workmen will not raise any demand or dispute whatsoever which may impse additional financial burden, direct or indirect, in respect of the demands already covered under the said Settlement, demands settled as withdrawn as also in respect of any other demand/s whatsoever. The workmen have no claim towards wages for the strike period i.e. from 23-3-2012 till 21-6-2012. The parties submit that in view of the said position it has been understood and settled between them, that no issue pertaining to the strike including that of legality or otherwise of the same does not survive nor can it be gone into and/or adjudicated upon.

In view of the above the parties pray that the above Reference may please be disposed of accordingly.

Mumbai :

Dated : 22nd October, 2012

For and on behalf of the Company	For and on behalf of the workmen
(Sithans Peshin)	(Suresh Patil)
Vice President-Operations & Supply Chain	Vice-President, Total Oil Employees' Union
(Santosh Narayanan)	(Dinesh Patil)
Sr. Manager-Operations	General Secretary, Total Oil Employees' Union

Sr. Manager-Personnel &
Plant Accounts

Joint Secretary,
Total Oil Employees' Union
(Laxman Chavan)
Committee Member
Total Oil Employees' Union

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 93.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन रेअर अर्थ लिमिटेड, मानावालाकुची के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 81/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-29011/22/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 19th December, 2012

S.O. 93.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Rare Earths Ltd., (Manavalakurichi) and their workman, which was received by the Central Government on 14-12-2012.

[No. L-29011/22/2010-IR (M)]

JOHAN TOPNO. Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Thursday, the 22nd November, 2012

PRESENT :

Shri A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 81/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Rare Earths Ltd. and their Workmen).

BETWEEN

The Secretary, : 1st Party/Petitioner
Anna Minerals Employees Union,
Indian Rare Earths Ltd.,
Manavalakurichi-629252

Vs.

The General Manager,
Indian Rare Earths Ltd.,
Manavalakurichi-629252

: 2nd Party/Respondent

APPEARANCES :

For the 1st Party/
Petitioner Union

: Sri D. Jayasingh,
Advocate

For the 2nd Party/
Management

: M/s S. Ramasubramanian &
Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-29011/22/2010-IR(M) dated 23-8-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Management of Indian Rare Earths Ltd., Manavalakurichi for not considering the request of the employees of Sri D. Balakrishnan and D. Mohandas against Sri M. Gopidhas, Junior getting more pay than the Senior as claimed by the Anna Minerals Employees Union is justified or not ? To what relief the workmen are entitled ?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 81/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed Claim, Counter, Rejoinder and Reply Statement as the case may be.

3. Claim Statement averments bereft of unnecessary details are as follows :

The dispute is regarding pay anomaly of (i) Sri D. Balakrishnan, C. No. 1340, (ii) Sri D. Mohandas, C. No. 1357 as per settlement dated 8-12-2005 between the 1st and 2nd Party. D. Balakrishnan, Tradesman was appointed on 29-12-1993 in III Category (2) Sri D. Mohandas, Tradesman was appointed on 4-8-1994. Though there are nine categories of employment, all come under workman category. Their pay and service benefits are fixed by settlements under law. Under 8-12-2005 settlement the Basic pay difference of the Senior Tradesman on par with the junior workers was resolved to be bridged by granting increments w.e.f. 1-7-2003 as a one-time measure to rectify the anomaly. Comparing D. Balakrishnan with M. Gopidhas, C. No. 1363 the juniormost Security Guard who is appointed under second category on 19-4-1995 was not granted any increment. D. Mohandas compared with the same M. Gopidhas was granted three increments only. The comparison made by the Management is not as per the settlement dated 8-12-2005 and is wrong. On 1-7-2006 D. Balakrishnan's Basic Pay is Rs. 8,330

but that of Gopidhas, worker is Rs. 8,460. Management could not act based on the settlement dated 8-12-2005. Sri T. Vijayakumar, C. No. 1362 appointed as Tradesman-III, 12 months junior to Balakrishnan is getting higher basic pay i.e. Rs. 8,460 on 1-1-2006. But D. Balakrishnan in the same category is getting lower pay of Rs. 8,330. Comparison made to D. Balakrishnan and D. Mohandas on par with M. Gopidhas is not correct and is not as per the settlement. Fixation of pay of D. Balakrishnan and D. Mohandas is not proper. They are entitled to pay on par with their juniors. Consequent to the settlement the Tradesman-III Vijayakumar with seniority of 3 months to Security Guard M. Gopidhas was granted five increments. But Tradesman D. Balakrishnan, Senior to M. Gopidhas and D. Mohandas by 16 months and 12 months respectively. Due to unfavourable and unmatching comparison they were pushed back to his junior Tradesman, T. Vijayakumar in the pay fixation from 1-9-2004. The pay of D. Balakrishnan and D. Mohandas is to be ordered to be fixed under adjudication.

4. Counter Statement averments briefly read as follows :

The dispute is that D. Balakrishnan, Tradesman “C” (Blacksmith, Fitter) and Sri D. Mohandas, Tradesman “C” (Electrical) are drawing less pay than their junior Sri M. Gopidhas, Security Guard (D). The reference is with regard to fixation of pay scale of Sri D. Balakrishnan and Sri D. Mohandas on par with their junior Sri. M. Gopidhas and not with reference to Sri T. Vijayakumar, Tradesman (C), Turner. As per the recruitment and promotion rules there are nine grades of various posts in the workman category. Ex. W1 is the lowest and Ex. W9 is the highest grade. Each post varies with different qualifications and experience. The various posts range from semi-skilled to highly skilled. In the case of Security Guard the entry level is in Grade W-II. As regards entry level of Tradesman it is in W-III. recruitment is strictly according to R & P Rules. With respect to training period, probation, etc. the same are incorporated in the Appointment Order. Promotions are also governed by R & P Rules. Pay and service benefits are fixed as per R & P Rules and by way of negotiations and settlements with the Unions. The direct recruitment in the case of worker and on compassionate recruitment, recruitment is as a trainee for six months to one year and thereafter absorb as worker in W-2 grade. To a worker or Security Guard recruited from Ex-Serviceman quota no training period is prescribed and are absorbed in W-2 i.e. as Worker (A)/Security Guard (A). On

completion of four years thereafter from the date of absorption they are promoted to W-3 worker Grade-I/Security Guard (B). Regarding Tradesman recruited directly 2 years training period is prescribed for those having SSLC with ITI in the relevant grade and after completion of 2 years training period they are absorbed in W-3 in the regular scale of pay. For Ex-Servicemen recruited in Tradesman category no training period is there and they are absorbed in W-3. In some instances Tradesman appointed on compassionate grounds were appointed as Trainee initially for one year only. For Diploma holders also only one year training period was prescribed. Promotion for Tradesman category from W-3 to higher grades is as per R & P Rules only. For promotion from W-3 to W-4 for Tradesman, 7 years service is required to be completed in W-3. Channel for promotion for the post of worker, security guard, etc. W2 onwards is as per R & P Rules as in the schedule herein. Similarly promotional channel from Tradesmen category from W-3 onwards is as in the schedule herein below as per R & P Rules. It can be seen that the total number of years of service to reach the highest grade i.e. W-9 for worker, Security Guard and equivalent post is 34 years. For Tradesman category the required number of years of service to reach the highest grade i.e. W-9 is 26 years. Due to different terms and conditions of service prescribed for the post of worker/security guard initially appointed in W-2 and that for the post of Tradesman initially appointed in W-3 anomaly had arisen with respect to the Basic Pay whereby during the period of time, some of the worker/security guard appointed in W-2 and junior to some of the Tradesmen appointed in W-3 grade are drawing higher basic pay. This has primarily arisen due to difference in number of years for the training period for those appointed in W-2 and W-3 and the number of years of service required for promotion from W-2 to W-3 and from W-3 to W-4. Against this temporary phenomena rectification requests came to arise. To resolve the anomaly complete revision of R & P Rules is needed. Without going for the revision of R & P Rules, as a special case respondent agreed to consider pay anomaly between the Tradesman vis-a-vis workers/security guards. Under an understanding dated 8-12-2005 it was agreed to bridge the basic pay difference of the Senior Tradesman on par with the junior workers by granting increments w.e.f. 1-7-2003 as a one-time measure to rectify the anomaly and also to raise no anomaly on this account in future. It was decided to step up the Basic Pay of 47 Tradesmen out of 67 Tradesmen whose Basic Pay was found to be less compared to the worker/security guard who are juniors to them by granting additional increments to

the 47 Tradesmen ranging from one increment to six increments w.e.f. 1-7-2003. Against the said terms and after getting the benefits the present dispute is raised. As per the said agreement there was no pay anomaly in the Basic Pay of D. Balakrishnan whose Basic Pay as on 1-7-2003 was found to be Rs. 7,940 whereas Basic Pay of M. Gopidhas, Security Guard junior to him was Rs. 7,840 as on 1-7-2003. Hence there was no question of grant of additional increment. As regards D. Mohandas, his Basic Pay as on 1-7-2003 was Rs. 7,550 whereas that of M. Gopidhas was Rs. 7,840. Three additional increments were added to the Basic Pay of Mohandas and his pay was re-fixed as Rs. 7,940 as on 1-7-2003, thus rectifying the anomaly. Claim for future anomaly is not justified. Regarding comparison of Basic Pay of Sri M. Gopidhas with Sri D. Balakrishnan there was no pay anomaly as on 1-7-2003 with Sri M. Gopidhas as per the agreement. Whereas in respect of Sri D. Mohandas, he was granted three additional increments, hence the dispute could not have been raised with respect to the two members with Sri M. Gopidhas. The Tradesmen category stands to gain in terms of promotion in the long run with less number of years to reach the highest category. Petitioner cannot keep on raising anomalies one after the other. Tribunal cannot go beyond the scope of reference. The fixation of Basic Pay is as per 8-12-2005 settlement. There is no comparison by Respondent for fixation of Basic Pay. It is by 8-12-2005 settlement signed by the Petitioner Union too that the change was brought about in fixation of pay-scale of different employees as a one-time measure. The claim beyond the scope of and out of the terms is not maintainable. On the move of all the Unions including Petitioner for a complete review of anomaly cases among Tradesmen vs. other categories for an amicable settlement in a final solution bilateral discussions are on. Hence the claim is only to be dismissed.

5. Rejoinder Statement in a nutshell is as follows :

The comparison made by the Respondent is not as per settlement. Sri D. Balakrishnan, a Senior Tradesman was granted lesser pay than his juniors like T. Vijayakumar in the scale of Tradesman Section.

6. Reply Statement in a nutshell is as follows :

8-12-2005 settlement was with a view to only bridge the pay difference of Senior Tradesman on par with junior workers by granting increments w.e.f. 1-7-2003 as a one-time measure with no right to place any more anomalies in future. Having settled in the agreement with their eyes open and enjoyed the benefits petitioner cannot raise further anomaly. The said settlement cannot be circumvented by the petitioner.

7. Points for consideration are :

- (a) Whether non-consideration of request of S/Sri D. Balakrishnan and D. Mohandhas seniors against Sri M. Gopidhas, junior getting more pay than them is justified or not ?
- (b) To what relief the concerned workmen are entitled ?

8. The evidence consists of the testimony of WW1 and Ex. W1 to Ex. W5 on the petitioner's side and the testimony of MW1 and Ex. M1 to Ex. M13 on the Respondent's side.

Points (i) & (ii) :

9. Heard both sides. Perused the records, documents, evidence and written arguments on either side. Both sides argued keenly in terms of their contentions in the respective pleadings with reference to documents, evidence and quoting rulings of higher courts. The challenge is against not granting any increment to Sri D. Balakrishnan, C. No. 1340 as Tradesman and granting only three increments to D. Mohandhas compared with M. Gopidhas. The comparison made by the Management for the above purpose is assailed as being not as per the settlement dated 8-12-2005 and as wrong. The fixation of pay of D. Balakrishnan and D. Mohandhas is impugned as being not proper and as being not on par with their juniors. The case of the Respondent is that the reference is in regard to dispute regarding fixation of pay scale of D. Balakrishnan and D. Mohandhas on par with their junior M. Mohandhas and not with reference to Sri T. Vijaya Kumar, Tradesman (C), Turner. Further according to the respondent pay and service benefits of the various workers under different posts are fixed as per R & P Rules together with negotiations and settlement with the Unions. Again according to the Respondent, due to different terms and conditions of service prescribed for the post of Worker/ Security Guard initially appointed in W2 and that for the post of Tradesman initially appointed in W-3 anomaly had arisen with reference to Basic Pay whereby during the period of, some of the workers/security guards appointed in W-2 and junior to some of the Tradesmen appointed in W-3 grade are drawing higher basic pay occasioned primarily due to difference in number of years for the training period and the number of years of service required for promotion from W-2 to W-3 and W-3 to W-4. It is against this temporary phenomena rectification request began to emanate to resolve which anomaly revision of R & P Rules became necessary. Without resorting to revision of R & P Rules as a special case 8-12-2005 settlement was reached just to bridge the Basic Pay difference of the Senior Tradesman on par with the junior workers by granting increments w.e.f. 1-7-2003 as a one-time measure. In terms of the said settlement discernibly there was no pay anomaly in the Basic Pay of D. Balakrishnan comparing to that of

M. Gopidhas. But as regards anomaly in the Basic Pay of Sri D. Mohandhas with that of M. Gopidhas the anomaly was rectified by granting three additional increments to the Basic Pay of Mohandhas. The argument of the petitioner that the rectification is not in terms of the 8-12-2005 settlement is discernibly incorrect. Petitioner has to confine to the terms of the reference whereunder the comparison is to be made with Gopidhas, a junior Security Guard and not with that of the Basic Pay of T. Vijayakumar, Tradesman-III. Though petitioner has had a case that at the stage of conciliation the dispute was regarding comparison of Basic Pay of the two members of the Petitioner Union with the Basic Pay of T. Vijayakumar, Tradesman-III, that is an argument without any sound edifice in the pleadings or mention in the reference. The Tribunal cannot go beyond the scope of the reference. It also cannot enlarge the scope of the reference by taking within it any matters other than that which are incidental to the reference. That "something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. This dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore cannot hurt the root of the main thing to which it is an adjunct. Admittedly the Basic Pay of S/Sri Balakrishnan and Mohandhas was actually compared with Mr. Gopidhas. It also stands proved by way of oral and documentary evidence such as Ex. M9 and Ex. M10. There is no further scope for comparison of their Basic Pay with Gopidhas in view of the inhibition in the settlement against future claims for anomaly rectifications. There is no scope for comparison with the Basic Pay of Mr. Vijayakumar which is not the terms of reference. The fixation of the pay of both Mr. D. Balakrishnan and D. Mohandhas is in terms of the 8-12-2005 settlement on comparison with Sri M. Gopidhas, junior worker getting more pay than them and once that has been done there cannot be any claim for further request for rectification which is not provided for or is not contemplated under the settlement. The claim is beyond the scope of and out of the settlement terms and therefore is not maintainable. Therefore, the non-consideration of request of Mr. D. Balakrishnan and D. Mohandhas against M. Gopidhas, junior worker is justified and Petitioner Union is not entitled to any relief in relation to the claims of their above-said members. However, there is an un-denied move from all concerned including Petitioner Union for a complete review of the anomaly cases among Tradesmen versus other categories for amicable settlement for a final solution for which there are ongoing bilateral discussions. Let the said discussions be continued so as to reach an amicable settlement with the required efficacy from the points of view of both parties in order to maintain and keep intact the industrial harmony, one of the magnanimous objectives sought to be achieved by the enactment of Industrial Disputes Act.

10. The reference is answered accordingly.

Ex. M8

08-12-2005

Copy of the Minutes of Discussion between Representative of the Respondent and the workmen rep. by its unions

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd November, 2012).

A. N. JANARDANAN, Presiding Officer

Ex. M9

01-07-2008

Revised scales of Pay w.e.f. 1-7-2008

Witnesses Examined :

For the 1st Party/ Petitioner : WW1, Sri J. Mohammed Rabi

Ex. M10

—

Pay comparison between D. Balakrishnan and M. Gopidhas

For the 2nd party/ Management : MW1, Sri S. V. Ramakrishnan

Ex. M11

—

Pay comparison between D. Mohanadhas and M. Gopidhas

Documents Marked :

On the Petitioner's side :

Ex. No.	Date	Description
Ex. W1	14-12-2009	Amended name of the 1st Party
Ex. W2	08-12-2005	Settlement between 1st Party and 2nd Party
Ex. W3	04-02-2005	Office Order for pay revision of Balakrishnan
Ex. W4	04-02-2006	Office Order for pay revision of Vijayakumar
Ex. W5	04-02-2006	Office Order for pay revision of Mohanraj

Ex. M12

—

List of Tradesman and workers/ Attender/Security Guard etc.

Ex. M13

—

List of Tradesmen compared with workers

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 94.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स आई. बी. पी. कम्पनी लिमिटेड, नौयडा उ.प्र. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 1/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-30011/53/2006-आई आर (एम)]

जोहन तोपनो, अवर सचिव

On the Management's side :

Ex. No.	Date	Description
Ex. M1	30-07-2012	Authorization given to Sri S. V. Ramakrishnan, Officer (Legal) to file Proof Affidavit on behalf of the Respondent/ Management
Ex. M2	08-03-1989	Copy of the Memorandum of Settlement and Promotion rule dated 6-3-1989
Ex. M3	01-07-1993	Revised scales of Pay w.e.f. 1-7-1993
Ex. M4	21-02-2002	Copy of the Revised Settlement and Promotion rule dated 6-3-1989
Ex. M5	01-07-1998	Revised scales of Pay w.e.f. 1-7-1998
Ex. M6	25-03-2003	Copy of the Revised Settlement and Promotion rule dated 21-2-2002
Ex. M7	01-07-2003	Revised Scales of Pay w.e.f. 1-7-2003

New Delhi, the 19th December, 2012

S.O. 94.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. I.B.P. Co. Ltd., Noida, U.P. and their workman, which was received by the Central Government on 14-12-2012.

[No. L-30011/53/2006-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 01/2007

[L-30011/53/2006-IR(M) dated 14-12-2006]

BETWEEN

The Secretary/President,
IBP Employees Union,
C/o Sri B.P. Singh,
165, Sector G, ADA Colony,
Kanpur, Lucknow
(Espousing cause of Sri Gaya Prasad)

AND

The General Manager,
I.B.P. Co. Ltd., Regional Office,
E-8, Sector 1,
Noida (U.P.)

The Depot Manager,
IBP Corpn. Ltd.,
Bulk Petroleum Depot,
E-8, Sector-1 Near Amausi Railway Station,
Amausi, Lucknow.

AWARD

1. By Order No. L-3011/53/2006-IR (M) dated 14-12-2006, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947) referred this industrial dispute between the Secretary/President, IBP Employees Union C/o Sri B.P. Singh, E-165, Sector G, ADA Colony, Kanpur Road, Lucknow and the General Manager (NR) IBP Co. Ltd., Regional Office, E-8, Sector 1 Noida and Depot Manager, IBP Corpn. Ltd., Bulk Petroleum Depot, E-8, Sector-1, near Amausi Railway Station, Amausi, Lucknow for adjudication.

2. The reference under adjudication is :

“Whether the action of IBP Company Ltd. in not promoting Sh. Gaya Prasad after providing the benefit of career progression scheme w.e.f. June, 1997 was legal and justified? If not, what relief the workman is entitled to ?”

3. The case of the workman, Gaya Prasad, in brief, is that he was appointed as Technician Grade II in the year 1992 and he was promoted from Grade. II to Grade IV on 15-12-1993 under the promotion policy available in the company. Workman Sri Gaya Prasad belongs to Kori which comes under the category of Schedule Caste. The workman further stated that by means of letter dated 15th May, 1997 issued by Sri R.K. Ratan, Chief Manager relaxation of experience for Schedule Caste/Schedule Tribe employees. In the letter it was clearly provided that in promotion under Career Progression Scheme was provided for non-managerial employees for time bound promotions on merit in Cluster C,D,E,F and G, Schedule Caste/Schedule Tribe Category employees who have completed three years of service in the lower grade be considered eligible for promotion to the higher grade. The workman union stated that despite fulfilling all requisite qualifications management

has not given him the benefit of the promotion policy even not considered for promotion due to some malafide intention. It was further stated by the workman union that Gaya Prasad was promoted w.e.f. 3-10-2000 on the post of Foreman (F) Grade V, in Cluster G, while he was entitled to get the promotion under the aforesaid promotion policy after completion of three years in the lower grade i.e. in the year of 1997. It was alleged by the workman union that junior persons namely Sri S.S. Karan, K.K. Grover, Yash Pal, Hans Raj, J.C. Upadhaya had already been promoted after providing the benefit of the aforesaid promotion policy. The workman alleged that he made several representations to the authorities concerned and ultimately gave legal notice also but all went in vein, it is clear that employers have adopted unfair labour practice. It is crystal clear that the action of the management in not promoting the workman Sri Gaya Prasad after providing the benefits of career progression scheme with effect from June, 1997 was neither legal nor justified. Accordingly the workman has prayed that action of the management in not promoting the workman after providing the benefits of career progression scheme with effect from June, 1997 he is entitled to get the promotion with effect from June, 1997 along with all consequential benefits including cost and expenses of the case.

4. The opposite party field its written statement, denying the claim of the workman; wherein it has been submitted that the workman was appointed as Technician, Grade-II in Blue Collar Category and subsequently he was placed as Chargeman (Machine) in Cluster-F in Grade IV with effect from 15-12-1993. The eligibility criteria for promotion have been relaxed for SC/ST employees, as per directives received from the Govt. of India. The career progression scheme (CPS), which is jointly signed by the Unions and the management, does not provide automatic promotion. Employees in Cluster C,D,E & F who have completed 4 years of service in a particular grade are considered for promotion to the next higher grade provided that the marks secured by them are 60 or more. This is as per rule laid down in promotion policy. The Govt. guidelines on relaxation policy for SC/ST employees provides relaxation of 1 years for experience only and as such no SC/ST employees get promotion automatically after completion of 3 years. In fact, workman could not secure required marks i.e. minimum of 60 and therefore he could not be considered for promotion. It has been submitted that when workman became eligible for promotion during the DPC held in the year 2000. Accordingly, workman was promoted as Foreman (Field) in Grade V in Cluster : C : w.e.f. 3-10-2000. It is submitted that juniors employees namely Sri S.S. Karan, K.K. Grover, Yash Pal, J.C. Upadhaya were promoted as per the criteria of promotion and after they were found to be meeting the requirements of career progression scheme. It was submitted that action of the management for not promoting the workman in June, 1997

is based on the provisions of career progression scheme and as soon as he was found fulfilling the requirements of the promotion scheme, he was promoted w.e.f. 3-10-2000. The workman has been promoted from time to time on the basis of his eligibility for promotion in accordance with the provisions of career progression scheme of the Company. The workman was not promoted in the year 1997 as he was not eligible for promotion and as such he is not entitled for any consequential benefits. It has been submitted that no unfair labour practice has been adopted by the company as alleged by the workman. The opposite party prayed that for not promoting the workman concerned is legal and justified. As such workman is not entitled to any relief whatsoever.

5. The workman has filed its rejoinder, wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim. The rejoinder was filed by workman on 22-9-2010 thereafter case was fixed for filing documents and evidence of workman when the evidence and documents were not filed by workman on 10-11-2010, 16-12-2010, 31-11-2011, 10-3-2011, 27-4-2011, 24-5-2011, 21-7-2011, 21-9-2011, 14-10-2011, 09-12-2011, 19-1-2012, 6-3-2012, 3-5-2012, 5-7-2012, 23-8-2012, 26-9-2012 and 21-11-2012. On 14-10-2011 the case was fixed for opposite party evidence. Neither the workman appeared in the witness box nor any affidavit in support of claim has been filed by him even though time was given to him repeatedly but he failed to file evidence in support of his case. Consequently the case was reserved for award considering the long pendency of the case and reluctance of the workman to pursue the case.

6. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the not providing the benefit of career progression scheme w.e.f. June 1997 was illegal. It was the case of the workman that he was entitled for promotion as per career progression scheme but not filed any oral or documentary evidence. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he was entitled for promotion as per career progression scheme.

7. In 2008 (118) FLR 1164 M/s. Uptron Powertronics Employees Union, Ghaziabad through its Secretary Vs Presiding Officer, Labour Court (II), Ghaziabad & Others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Shanker Chakravarti Vs. Britannia Biscuit Co. Ltd., 1979 (39) FLR 70 (SC) V.K. Raj Industries Vs. Labour Court and Others, 1984 (49) FLR 38 Airtech Private Limited Vs. State of U.P. and Others and 1996 (74) FLR 2004 (All.) Meritech India Ltd. Vs. State of U.P. and Others; wherein it was observed by the Apex Court :

"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would, who would fail if no evidence is led."

8. In the present case the workman has stated that he was entitled for promotion as per career progression scheme but has not produced any document and evidence in support of his case.

9. Mere pleadings are no substitute for proof. Initial burden of establishing the fact for promotion as per career progression scheme is upon the workman which he failed to discharge. There is no reliable material for recording findings that the workman was entitled for promotion.

10. Accordingly, the reference adjudicated against the workman Sri Gaya Prasad and I come to the conclusion that workman is not entitled to the relief claimed.

11. Award as above.

Lucknow : Dr. MANJU NIGAM, Presiding Officer
23-11-2012.

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 95.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बिरला सन लाइफ इन्श्योरेंस कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 17/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-17012/48/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 19th December, 2012

S.O. 95.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2008) of the Central Government Industrial Tribunal/Labour Court, No. 1, Mumbai, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Birla Sun Life Insurance Company Ltd. and their workman, which was received by the Central Government on 14-12-2012.

[No. L-17012/48/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL/LABOUR COURT
No. 1, MUMBAI**

JUSTICE G.S. SARRAF, Presiding Officer

Reference No. CGIT-1/17 of 2008

Parties : Employers in relation to the management of Birla Sun Life Insurance Company Ltd.

AND

Their Workman (Suresh Nagappa Bhange)

APPEARANCES :

For the first party : Mr. Satish C. Hegde, Adv.
For the workman : Mr. S. Parades, Adv.
State : Maharashtra

Mumbai, dated the 3rd day of December, 2012.

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 the Central Government has referred the following dispute for adjudication to this Tribunal :

“Whether there is employer-employee relationship existed between the management/company and Shri Suresh Nagappa Bhange on the date of alleged termination of his services. If so, whether the demand of Shri Bhange for reinstatement in service with full back wages and continuity of services w.e.f. 30-5-2005 is legal, proper and just? What relief Shri Bhange is entitled to and from which date and what other directions are necessary in the matter.”

2. According to the statement of claim filed by the second party workman he was in the employment of M/s. Birla Sun Life Insurance Company as a driver since 1994. He put in more than 11 years of continuous service and his last drawn wages were Rs. 7,250 p.m. His services were orally terminated on 30-5-2005 by the first party without any notice or enquiry. He has, therefore, prayed that he be reinstated with full back wages.

3. According to the written statement the second party workman was never employed by the first party and, therefore, there never existed employer-employee relationship between the two. The first party was incorporated on 4-8-2000 and thus there is no question of the first party employing the second party before that date. The second party workman was employed as a personal driver of one Kedar Mulgund and that appointment letter was issued by Kedar Mulgund and not by the first party. The first party has never employed any driver for any of its officers or executives and there is no such post or position in the first party. Before working with Kedar Mulgund the second party workman was working with Vijay Singh before the first party was incorporated and this shows that the second party workman was personal

driver of Vijay Singh. According to the written statement when there is no employer-employee relationship between the parties there is no question of termination much less an illegal termination of the second party workman by the first party. It has, therefore, been prayed that the reference be dismissed.

4. The second party workman has filed rejoinder wherein he has reiterated his stand.

5. The second party workman has filed his affidavit and he has been cross-examined by learned counsel for the first party. The first party has filed affidavits of Ganesh Poojary and Kedar Mulgund who have been cross-examined by learned counsel for the second party workman.

6. Heard Mr. Paradesi learned counsel for the second party workman and Mr. Hegde for the first party.

7. The second party workman has stated in his cross examination :

“I did not apply for job in the first party. This is correct that I used to get my salary first from Viaysingh then from Sunny Oberoi and then from Kedar Mulgund. I used to get the salary in cash and I used to sign on a voucher”

It is thus clear that the second party workman has never applied for job in the first party. There is no appointment letter issued by the first party in favour of the second party workman. The second party workman does not say that his salary was paid by the first party but he states that he was paid salary first by Vijaysingh, then by Sunny Oberoi and then by Kedar Mulgund.

8. The second party workman has produced letters Ex. W-1 to Ex. W-4. Ex. W-1 is a letter from Sunny Oberoi, Ex. W-2 and Ex. W-4 are letters from Vijaysingh and Ex. W-3 is a letter from Kedar Mulgund and from all these letters it is clear that the second party workman was personal driver of the persons issuing the letters.

9. There is thus nothing on the record to establish the relationship of employer-employee between the parties. Rather the evidence on the record shows that the workman was never employed by the first party.

10. It is clear from the above discussion that the second party workman has miserably failed to prove employer-employee relationship between him and the first party. In view of this the demand of the second party workman for reinstatement in service with full back wages and continuity of service with effect from 30-5-2005 is wholly improper, unjust and without any legal basis.

11. Thus the second party workman is not entitled to any relief.

Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 96.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स हरियाणा मिनिरल्स लिमिटेड गुडगांव के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 115/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-29025/5/2007-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 19th December, 2012

S.O. 96.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Haryana Minerals Ltd., Gurgaon and their workman, which was received by the Central Government on 14-12-2012.

[No. L-29025/5/2007-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1,
KARKARDOOMA COURTS
COMPLEX, DELHI**

I. D. No. 115/2011

Shri Udham Singh,
S/o Shri Pal Singh,
Vill. Mewla Maharajpur PO,
Amar Nagar, Tehsil & Distt.
Faridabad

... Workman

Versus

The Managing Director,
Haryana Minerals Ltd.,
Vanijay Nikunj, Phase-5,
Udyog Vihar HSIDC Complex,
Gurgaon, Haryana

... Management

AWARD

A company with the name of M/s. Haryana Minerals Ltd. (in short the Company) was incorporated in 1972 as a

wholly owned subsidiary of Haryana State Industrial Development Corporation. The Company was granted lease rights in the area of stone mining. It took 34 mines on lease from the State Government. The Company used to excavate stones and supply it as raw material to stone crushers, operating in Suraj Kund, Lakhanpur, Lakkarpur, Kattan, Gurukul, Badkhal, Pallinangla, Saraikhwaja, Anangpur and Ballabgarh. Shri MC Mehta, an environmental activist, filed a writ petition before the Apex Court, being CWP No. 4677 of 1985, wherein the Apex Court passed order on 15-5-1992, which runs as under :

“For the reasons to be recorded and pronounced at a later stage we order and direct as under :

- (1) The mechanical stone crushers established/operating in Lal Kuan, Anand Parbat, Rajokri, Tughlakabad and in any other area of Union Territory of Delhi shall stop operating/functioning with effect from August 15, 1992. No stone crusher shall operate in the Union Territory of Delhi from August 15, 1992 onward.
 - (2) The mechanical stone crushers established/operating in Suraj Kund, Lakhanpur, Lakkarpur, Kattan, Gurukul, Badkhal, Pallinangla, Saraikhwaja, Anangpur and Ballabgarh areas of Haryana shall stop operating/functioning with effect from August 15, 1992. No stone crusher shall operate in the above said areas from August 15, 1992 onwards.
-
- (5) The stone crushers, in respect of which closure-orders/directions have been issued by the Central Pollution Control Board under Section 31A of Air (Prevention and Control of Pollution) Act, 1981 or by the Central Government under Section 5 of the Environment (Protection) Act 1956, shall stop functioning/operation with immediate effect.”

2. In compliance of above orders, all stone crushers operating in above areas stopped working. Since stone crushers had to stop working, there were no buyers for the products of the Company. The Company made best efforts to find buyers elsewhere. When it could not find any economical buyer for its products, it decided to stop production and surrender lease of the mines. The Company retrenched 234 surplus employees on 21-12-1992, after making payment of their statutory dues. Shri Udham Singh, was one of the employees, who were retrenched by the Company on 21-12-1992.

3. After a gap of more than 15 years, Shri Udham Singh raised a demand for reinstatement of his services on the Company. When his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer.

Since the Company contested his claim, conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to the Central Government Industrial Tribunal No. II, New Delhi, for adjudication, vide Order No. L 29025/5/2007-IR (M), New Delhi dated 25-2-2008, with following terms :

“Whether action of the management of M/s. Haryana Minerals Ltd., Gurgaon in terminating services of Shri Udham Singh, ex-Bill Clerk, with effect from 21-12-1992 is just, fair and legal ? If not, to what relief the workman is entitled to and from which date ?”

4. Claim statement was filed by Shri Udham Singh pleading that he was appointed as bill clerk by the Company on 15-4-1990. His consolidated salary was Rs. 1165.00 per month. He was appointed against permanent vacancy. His work and conduct were satisfactory. He never gave any chance of complaint to the Company. His services were terminated by the Company on 21-12-1992. At the time of termination of his service, Company had neither displayed seniority list nor notice or pay in lieu thereof was given to him. Retrenchment compensation was also not paid to him. He claims reinstatement in service of the Company with continuity and full back wages.

5. Claim was demurred by the Company pleading that there were 34 mines which were taken on lease from the State Government. Renewal of lease of mines was to be decided by the State Government, hence it was beyond its control to get lease of mines renewed. Therefore, the Company engaged workmen of various categories on daily rate and casual basis. Claimant was engaged on casual basis.

6. The Apex Court, in writ petition, being CWP No. 4677 of 1985, passed order on 15-5-1992 directing all mechanical stone crushers established/operating in Suraj Kund, Lakhampur, Lakkarpur, Kattan, Gurukul, Badkhal, Pallinangla, Saraikhwaja, Anangpur and Ballabgarh areas to stop operating/functioning with effect from 15-8-1992. No stone crusher was allowed to operate in aforesaid areas from 15-8-1992 onwards. In compliance of the said order, all stoner crushers working in aforesaid areas stopped functioning. Since the Company was producing stones, which was raw material for stone crushers, it lost its market. It could not find any buyers elsewhere, hence it had to decide to stop production and surrender lease of mines, referred above. After making all adjustments, it came to light that 234 employees of different categories became surplus. The Company had retrenched those employees on 21-12-1992, after making payment of their legal dues, viz. Salary of notice period, gratuity, retrenchment compensation and their other allowances. Claimant was one of the employees, who were retrenched. His dues, including notice pay and retrenchment compensation, were paid.

7. The Company further pleads that the claimant was retrenched on 21-12-1992. He raised a dispute under reference after a long gap of 16 years. Claim raised by the claimant is liable to be discarded on this count, pleads the Company.

8. The Company opted to abandon the proceedings since 2-2-2010, hence, it was proceeded ex-parte vide order dated 9-11-2010.

9. Vide Order No. Z-22019/6/2007-IR (C-II), New Delhi dated 30-3-2011, the case was transferred to this Tribunals, for adjudication, by the appropriate Government.

10. Since the Company stood liquidated and facts were not disputed, the claimant opted not to adduce any evidence in the matter.

11. Arguments were heard at the bar Shri Lalit Narain, authorised representative, advanced arguments on behalf of the claimant. None came forward to raise submissions on behalf of the Company. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows.

12. One may argue that the Company was incorporated in 1972 as a wholly owned subsidiary of Haryana State Industrial Development Corporation. Under these circumstances, the Central Government was not the appropriate Government for making reference of the dispute to this Tribunal for adjudication. For an answer to this proposition, legal framework is to be noted. Clause (a) of Section 2 of the Industrial Disputes Act 1947 (in short the Act) defines appropriate Government. It would be expedient to consider definition of the phrase ‘appropriate Government’. Consequently, definition of the phrase is extracted thus :

“2(a) ‘appropriate Government’ means—

- (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees’ State Insurance Corporation established under Section 3 of the Employees’ State Insurance Act, 1948 (34 of 1948), or the Board of Trustees and the State Board of Trustees under Section 5A and Section 5B, respectively, of the Employees’ Provident

Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16, of the Food Corporation Act, 1964 (37 of 1964), or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, the National Housing Bank established under Section 3 of the National Housing Bank Act, 1987 (53 of 1987) or the Banking Service Commission Act, 1975 or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, an company in which not less than fifty one per cent of the paid up share capital is held by the Central Government, or any Corporation, not being a Corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government; and

- (ii) in relation to any other industrial dispute, the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government :

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case

may be, which has control over such industrial establishment”

13. In relation to an industrial dispute, appropriate Government can either mean the Central Government or the State Government. The Central Government has been defined under Section 3(8) and the State Government under Section 3(60) of the General Clauses Act, 1897. In relation to an industrial dispute concerning :

- (1) an industry carried on or under the authority of the Central Government, or a railway company, or
- (2) a such controlled industry as may be specified in this behalf by the Central Government, or
- (3) a Dock Labour Board established under Section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or
- (4) the Industrial Finance Corporation of India Limited formed and registered under the companies Act, 1956, or
- (5) the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or
- (6) the Board of Trustees constituted under Section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or
- (7) the Central Board of Trustees and the State Boards of Trustees constituted under Section 5A and Section 5B respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or
- (8) the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or
- (9) the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or
- (10) the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or
- (11) the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or
- (12) the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or
- (13) the Food Corporation of India established under Section 3 of the Food Corporation Act, 1964 (37 of 1964), or

- (14) a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or
- (15) the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or
- (16) a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or
- (17) the Export Credit and Guarantee Corporation Limited, or
- (18) the Industrial Reconstruction Bank of India Limited, or
- (19) the National Housing Bank established under Section 3 of the National Housing Bank Act, 1987 (53 of 1987), or
- (20) an air transport service, or
- (21) a banking company, or
- (22) an insurance company, or
- (23) a mine, or
- (24) an oil-field, or
- (25) a Cantonment Board, or
- (26) a major port, or
- (27) any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or
- (28) any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or
- (29) the Central public sector undertaking, or
- (30) subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the appropriate Government would mean the Central Government.

14. In relation to an industrial dispute appropriate Government can either mean Central Government or State Government. In relation to any industrial dispute, other than those specified in sub-clause (i) of clause (a) of Section 2 of the Act, appropriate Government would be State Government. In other words, all industrial disputes which are outside the purview of sub-clause (i) are concern of the State Government under sub-clause (ii) of clause (a) of Section 2 of the Act. Thus, the general rule is that an industrial dispute raised between employer and his employee would be referred for adjudication by the State Government, except in cases falling under Section 2(a)(i) of

the Act. Consequently, where industrial dispute which does not fall within the ambit of Section 2(a)(i) of the Act, appropriate Government cannot be the Central Government.

15. Clause (1b) of Section 2 of the Act defines mine as 'mine' defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952. Mine in relation to an industrial concerning 'mines' used in clause (a) of Section 2 of the Act has to be construed with reference to broad function of the industry given in the Act. An employee, employed in any mining operation, for the propose of searching or obtaining minerals by extraction, including all brings, bore holes, oil wells and other modes of working, enumerated in the definition of mines can be stated to be employed in a mine. But unless a person is so employed, he cannot be said to be engaged in a mine or any kind of working incidental to or connected with mining operation. As the facts of the present controversy unfold the claimant was employed as a bill clerk in one of the mines, which had to be stopped on account of missives given by the Apex Court in the precedent referred above. Therefore, it is evident that the claimant was employed in a mine. The appropriate Government was the Central Government to make reference of the dispute for adjudication.

16. As conceded on behalf of the claimant, a few of retrenched, employees challenged their order of retrenchment before the Punjab and Haryana High Court vide CWP No. 2293 of 1993 and CWP No. 6331 of 1993. Those writ petitions were disposed of by the High Court vide order dated 4-2-1994. When order passed by the High Court is perused, it came to light that payment of notice pay and retrenchment compensation to its employees by the Company was not in dispute. It was only agitated that provisions of Section 25F of the Act were not applicable since the Company had employed more than 100 employees. The claim was raised that provisions of Section 25N of the Act were applicable. Out of the judgement handed down by the High Court of Punjab and Haryana, it is evident that the Company had retrenched its 234 surplus employees on 21-12-1992 after making payment of their legal dues, such as salary of notice period, gratuity, retrenchment compensation, pay and other allowances admissible to them. Thus, it is crystal clear that the Company had stopped its functions, when it lost buyers, as an aftermath of the orders passed by the Apex Court on 15-5-1992. The Company had retrenched surplus 234 employees and pre-conditions for retrenchment, contained in Section 25F of the Act, were complied with. Thus, it is crystal clear that there is no dispute to the proposition that provisions of Section 25F of the Act were complied with the Company. No. illegality and unjustifiability in action of the Company in retrenching services of the claimant has been brought to the light of the day.

17. The Company had closed its business activities in areas of Suraj Kund, Lakhanpur, Lakkarpur, Kattan,

Gurukul, Badkhal, Pallinangla, Saraikhwaja, Anangpur and Ballabgarh where mechanical stone crushers were operating. At that time, claimant along with other 233 persons was retrenched. Notice pay and retrenchment compensation was paid to him. Subsequently, company stood liquidated in the year 2006, which fact is admitted on behalf of the claimant. Under these circumstances, it is apparent that the claimant has no claim for reinstatement in service with continuity and full back wages.

18. There is other facet of the coin. Services of the claimant were retrenched on 21-12-1992. After receipt of notice pay and retrenchment compensation, claimant went into hibernation. He came out of slumbers after a long gap of 16 years. Whether this delay in raising the dispute would come in the way of the claimant to seek relief? For an answer, legal propositions are to be looked into. Section 10(1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub-section (1) of Section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In *Shalimar Works Ltd.* [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that dispute should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In *Western India Match Company* [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in *Mahabir Jute Mills Ltd.* [1975 (2) LLJ 326]. In *Gurmail Singh* [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In *Prahalad Singh* [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. Relying decision of the Apex Court, High Court of Delhi ruled in *Sher Singh* [2008 (1) LLJ 161] that delay in seeking remedy in law ousts the petitioner. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

19. As projected above, services of the claimant were retrenched on 21-12-1992. For the first time, he raised a demand of reinstatement in the end of 2007. When his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer. Thus, it is evident that till concluding months of 2007, the claimant cooled his heels. For more than 15 years, no steps were taken by the claimant. It is evident that there was no dispute which was existing or apprehended to have been existing. Stale claim put forward by the claimant ousts him from the legal arena. He is not entitled to any relief on this count too.

20. In view of the reasons detailed above, it is evident that the claimant had not been able to show that the order of terminating his services passed by the Company on 21-12-1992, was not legal. Justifiability and fairness of the order have emerged over the record. Claimant is not entitled to any relief. His claim statement is accordingly, brushed aside. An award is passed in favour of the company and against the claimant. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 27-11-2012

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 97.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कोचिन रिफाइनरी इम्प्लाईज कंन्टीन कोपरेटिव सोसाईटी, अम्बाला-मुगल (केरला) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोचिन के पंचाट (संदर्भ संख्या 7/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-30011/36/2010-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 19th December, 2012

S.O. 97.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2011) of the Central Government Industrial Tribunal/Labour Court, Cochin now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Cochin Refinery Employees Canteen Co-operative Society, Ambalamughal (Kerala) and their workman, which was received by the Central Government on 14-12-2012.

[No. L-30011/36/2010-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM****PRESENT:**

Shri D. Sreevallabhan, B.Sc., LL.B., Presiding Officer

(Wednesday the 21st day of November, 2012)

I.D. No. 7/2011

Union : The General Secretary,
Cochin Refinery Employees'
Canteen Co-op. Society Canteen
Employees' Union,
Ambalamughal
(Kerala) - 682 302

By Adv. Shri C. Anil Kumar

Management : The President,
Cochin Refinery Employees'
Canteen Co-operative Society,
Ambalamughal,
(Kerala) - 682 302

By M/s. Menon & Pai

This case coming up for final hearing on 15-11-2012 and this Tribunal-cum-Labour Court on 21-11-2012 passed the following :

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 the Government of India, Ministry of Labour by Order No. L-30011/36/2010-IR (M) dated 8-3-2011 referred the following industrial dispute to this tribunal for adjudication :

"Whether the action of the management of M/s. BPCL Employees' Co-operative Societies Ltd., the erstwhile Kochi Refineries Employees' Co-operative Societies Ltd. in not honouring the commitment made by them to S/Shri Santhosh K.R., Murali N., Salim K.M., Aboobacker A.K., Shiv Asankaran T.V., Vinodkumar K.V., Sivan M.B., Saju John, Salomon M.K., Radhkrishnan C., Shailajan K.C., James Yohannan, Vimal V.J. and Saneesh T Joseph in their respective order of punishment is fair and justifiable ? To what relief they are entitled ?"

2. This reference is at the instance of Cochin Refinery Employees' Canteen Co-operative Society Canteen Employees' Union and the challenge is regarding the validity of the domestic enquiries and the imposition of penalties on fourteen workmen of the management.

3. They were imposed with different penalties after conducting enquiries for unauthorized absence for various terms. According to the union the enquiries were conducted in violation of the principles of natural justice and the punishment imposed is excessive and disproportionate to the charges found to be proved against them.

4. Management filed written statement giving the details as to the unauthorized absence of each of those workers and contending that the enquiries conducted against the workmen are legal, fair and proper and in accordance with the principles of natural justice. The reference itself is not maintainable as it relates to separate enquiries against the fourteen workmen. The issue referred for adjudication is not an industrial dispute as defined under Section 2(k) of the Industrial Disputes Act. The penalties imposed on them do not call for any interference as the acts of misconduct were of grave and serious nature.

5. At the time when the case stood posted for evidence union has filed memo to the effect that it does not want to proceed with the reference. Learned Counsel for the management has submitted that there is no need to proceed with the reference as the union does not want to proceed with the matter. Hence the reference is closed.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 21st day of November, 2012.

D. SREEVALLABHAN, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 98.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सुकिन्डा क्रोमिक माइन्स ऑफ टिस्को, जजपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 51/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-12-2012 को प्राप्त हुआ था।

[सं. एल-29012/16/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 19th December, 2012

S.O. 98.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2011) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Sukinda Chromite Mines of TISCO,

Jajpur and their workman, which was received by the Central Government on 14-12-2012.

[No. L-29012/16/2010-IR (M)]
JOHAN TOPNQ, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour,
Court, Bhubaneswar

Industrial Dispute Case No. 51/2011

Date of Passing Order—5th November, 2012

L-29012/16/2010 – IR (M-II), dated 18-10-2011

BETWEEN:

1. M/s. Naresh Kumar & Co. (P) Ltd.,
C/o Sukinda Chromite Mines of TISCO,
At./PO Kalarangiatta, Distt. Jajpur
2. The Deputy General Manager,
Sukinda Chromite Mines of TISCO,
At./PO Kalarangiatta, Distt. Jajpur, Orissa

... 1st Party-Managements

AND

Their Workman Shri Dukha Bandhu Dehury,
C/o. Shri Pabana Dehury, At. Sendhaswar,
PO. Murubail, Via, Badasual, Dhenkanal

... 2nd Party-Workman

APPEARANCES:

- None : For the 1st Party-Managements
None : For the 2nd Party-Workman

ORDER

Case taken up today. None of the parties is present. Today the case is fixed for exparte evidence of the 2nd Party-workman, but the 2nd Party-workman is absent. No application for time has been received. As such there has not come any evidence of the 2nd Party-workman in support of his claim.

2. The 2nd Party-Workman has also not filed any document to show and prove he had uninterruptedly and continuously worked under the management of M/s. Naresh Kumar & Co. (P) Ltd., C/o M/s. Sukinda

Chromite Mines of TISCO, At./PO Kalarangiatta, Distt. Jajpur for the period from 2001 to 2010. He has filed two xerox copies of P.F. slips for the year 2002-03 and 2003 to 2004 in his name, but these slips are not the proof of having served with the 1st Party-Management continuously for a span running from 2001 to 2010 or evidence to have worked continuously for 240 days during a period of 12 calendar months preceding the date of his alleged termination. The workman has not disclosed in his statement of claim as to when he was terminated while the schedule of reference mentions the date of termination as 31-7-2006. In this view of the matter it cannot be said that he had worked with the 1st Party-Management No. 1 till 2010. Without any documentary evidence supported by oral evidence it cannot be taken as proved that the 2nd Party-workman had worked with the 1st Party-Management No. 1 continuously and uninterruptedly for a period of 10 or at least for 240 days making him entitled to reinstatement in service with benefits under Section 25F of the Industrial Disputes Act, 1947. Therefore, no question arises for compliance of provisions of Section 25F of the aforesaid Act by the Management. His alleged termination from service is quite legal and justified and the 2nd Party-workman is not entitled to any relief for having failed to prove his case.

3. The reference is answered accordingly.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 99.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नं.-1, धनबाद के पंचाट (आई डी संख्या 52/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/189/2005-आई आर (सीएम-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 99.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ECL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/189/2005-IR (CM-I)]
B. M. PATNAIK, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. I, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D.
Act.

Reference No. 52 of 2006

Employer in relation to the management of Lakhimata
Colliery under Mugma Area of M/s. ECL.

AND

Their Workmen.

PRESENT:

SRI RANJAN KUMAR SARAN, Presiding Officer

APPEARANCES:

For the Employers : Sri D. Verma, Advocate

For the Workman : Sri U. P. Sinha, Advocate

State : Jharkhand Industry : Coal

Dated : 4-12-2012

AWARD

By order No. L-20012/189/2005-IR (CM-I),
dt. 1-6-2006, The Govt. of India, Ministry of Labour, has in
exercise of the power of conferred by clause (d) of Sub-
Section (1) and Sub-Section (2A) of Section 10 of the
Industrial Disputes Act, 1947, referred the following
disputes for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Lakhimata
colliery under Mugma Area of M/s. ECL in not
referring Sh. Haru Mahato fan operator to the age
assessment Committee/Medical Board and
consequently superannuating him w.e.f. 30-6-2005 is
in order ? If not, to what relief is the concerned
workman entitled ?”

1. Both parties appeared after notice. Submitted claim
statements and rejoinder. Case has been posted for evidence
from the side of the management. In the meantime the
workman constantly remained absent for last 10 dates. Even
his lawyer though present did not submit anything. It is
presumed that the workman lost interest in prosecuting
the case. Presumably this is no dispute subsist between
the parties. No dispute Award passed. Communicate to the
ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

क्र. आ. 100.—औद्योगिक विवाद अधिनियम, 1947 (1947
का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी.
एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक
अधिकरण एवं श्रम न्यायालय, नं.-1, धनबाद के पंचाट (आई डी
संख्या 40/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को
20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/71/2007-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 100.—In pursuance of Section 17 of the
Industrial Disputes Act, 1947 (14 of 1947), the Central
Government hereby publishes the award (Ref. No. 40/2007)
of the Central Government Industrial Tribunal-cum-Labour
Court No. 1, Dhanbad as shown in the Annexure in the
Industrial Dispute between the employers in relation to the
management of M/s. BCCL and their workman, which was
received by the Central Government on 20-12-2012.

[No. L-20012/71/2007-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. I),
DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D.
Act.

Reference No. 40 of 2007

Employers in relation to the management of E. J. Area
of M/s. BCCL.

AND

Their Workmen.

PRESENT:

SRI RANJAN KUMAR SARAN, Presiding Officer

APPEARANCES:

For the Employers : None.

For the Workmen : None.

State : Jharkhand.

Industry : Coal.

Dated : 4-12-2012

AWARD

By order No. L-20012/71/2007-IR (C-I), dt. 23-7-2007,
The Govt. of India, Ministry of Labour, has in exercise of
the power of conferred by clause (d) of Sub-Section (1)
and Sub-Section (2A) of Section 10 of the Industrial
Disputes Act, 1947, referred the following disputes for
adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Bhowra
(S) O.C.P. under E. J. Area of M/s BCCL in not
providing dependent employment to Shri Jitendra

Pasi, S/o Late Ram Raj Pasi, C. C. M. Mazdoor, under the provisions of NCWA is justified and legal ? If not, to what relief is the dependent son of Late Ram Raj Pasi entitled ?

1. Both parties are noticed. Submitted their claim statements. But subsequently none appears in court inspite of notices. The workman has remained absent since last 12 dates. So also the management. It is clear that there is no dispute between the workman and the management. Hence No Dispute Award is passed. Communicate to Ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 101.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नं.-1, धनबाद के पंचाट (आई डी संख्या 99/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/84/1991-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 101.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/84/1991-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act.

Reference No. 99 of 1991

Employers in relation to the management of Sudamdih Shaft Mine of M/s. BCCL.

AND

Their Workmen.

PRESENT:

SRI RANJAN KUMAR SARAN, Presiding Officer

APPEARANCES:

For the Employers : None.

For the Workman : None.

State : Jharkhand.

Industry : Coal.

Dated : 4-12-2012

AWARD

By order No. L-20012/84/91-IR (C-I), dt. 11-10-91, the Govt. of India, Ministry of Labour, has in exercise of the power of conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Sudamdih Shaft Mine of M/s. Bharat Coking Coal Ltd., in not sending Shri Dwarika Gope to the Apex Medical Board for assessment of his age is justified ? If not, to what relief the workman is entitled ?"

1. After receipt of the reference the parties are noticed. They submitted their claim statement. The averments of the workman is his date of birth is as per his I.D. Card is 2-12-1939. But it is the case of the management that the date of birth of the workman as recorded in his previous service excerts where he worked initially is 1-1-1930. Workman examined himself as a witness and on behalf of the management one witness has been examined. Management produced eight documents. Workman filed three documents, two I.D. Card alleged to have been issued by the management where his date of birth recorded as 2-12-1939, which has been disputed by the management. But the management i.e. extract of Form-B register shows the date of birth recorded of the workman was 1-1-1930 and the workman has been serving in the NCDC since 1963. In the Form B Register Ext. M-2 the Date of birth of the workman has been recorded. The workman raised objection that his date of Birth should be corrected to 1-7-1940. The workman, in some place claims that his date of Birth is 1-7-1940 and in some place 2-12-1939. So there is no clear picture regarding his date of Birth. Nor he moved earlier or claimed that he should be sent for Medical Board for his age determination. His belated claim is rightly not accepted by the management. Rather from the Form-B Register which is maintained by the management long back has been accepted. Hence there is no need to order to send the workman to Medical Board for his age determination. The reference is therefore answered against the workman.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 102.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जी. एस. ए. वर्ल्ड एयर प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नं.-2, मुम्बई के पंचाट (आई डी संख्या सी जी आई टी-2/33 का 2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-11012/48/2005-आई आर (सी एम-1)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/33 of 2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of M/s. G.S.A. World Air Pvt. Ltd. and their workman, which was received by the Central Government on 20-12-2012.

[No. L-11012/48/2005-IR (CM-I)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/33 of 2006

Employers in relation to the management of
M/s. G. S. A. World Air Pvt. Ltd.

The Director
M/s. GSA World Air Pvt. Ltd.,
315 Indraprakash Building,
21, Barakhamba Road,
New Delhi-110 001.

AND

Their Workman.

Smt. Keshwar Z. Khan
Mount View Co-op. Housing Society,
8/1/7, Bhavani Nagar,
Marol Maroshi Road,
Andheri (E),
Mumbai-400 059.

APPEARANCES:

For the Employer : Mr. G. S. Desai, Advocate
For the Workmen : Mr. M. B. Anchan, Advocate

Mumbai dated the 6th November, 2012.

AWARD

1. The Government of India, Ministry of Labour and Employment by its Order No. L-11012/48/2005-IR (CM-I), dated 1-6-2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. GSA World Air Pvt. Ltd., Subsidiary of Oman Air in terminating the services of Smt. Keshwar Z. Khan w.e.f. 15-4-2005 is justified? If not, to what relief is Smt. Keshwar Z. Khan entitled?”

2. After receipt of the reference, notices were sent to both the parties. In response to the notice, second party filed her statement of Claim at Ex-7. According to her, she was appointed as Reservation and Ticketing Agent (JVG) in Oman Air, Mumbai w.e.f. 1-9-1998. She was confirmed from 13-2-1999. Oman Air got prepared her resignation letter dated 5-8-2004 and on the same day issued her an appointment letter of GSA World Air Pvt. Ltd., a subsidiary company of Oman Air. She further states that her services were terminated from 18-4-2005 for handling of the travel documents of another carrier while being on duty in office meant for Oman Air. It is further submitted that no show cause or charge-sheet was issued for the alleged misconduct nor inquiry was held before terminating her services. She therefore prays that the action of first party be held illegal and unjustified and she be reinstated in service with full back wages and continuity of service.

3. First party management resisted the statement of claim of the workman by filing their written statement at Ex-8. According to the first party the demand raised by the second party is wholly misconceived, baseless, frivolous and not maintainable. This Tribunal has no jurisdiction to try and entertain the reference and therefore prays that the reference be rejected with cost.

4. Second party filed her Rejoinder at Ex-9 reiterating the contentions in the statement of claim.

5. Today both the parties appeared and filed Terms of Settlement (Ex-19) and prayed to dispose of the reference as they have amicably settled the dispute. In the circumstances, I pass the following order:

ORDER

Reference stands dismissed for want of prosecution as the matter is settled as per Terms of Settlement (Ex-19).

Date: 6-11-2012

K. B. KATAKE, Presiding Officer

ANNEXURE
BEFORE THE HON'BLE CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-II
AT MUMBAI

Reference (IT) No. 33 of 2006

BETWEEN

Management of M/s GSA World Air Pvt. Ltd.

AND

Mrs. Keshwar Z. Khan

MAY IT PLEASE THE HON'BLE TRIBUNAL:

M/s World Air Pvt. Ltd. (hereinafter referred to as the 'First Party') and Mrs. Keshwar Z. Khan (hereinafter referred to as the 'Second Party') have amicably settled the dispute referred to this Hon'ble Industrial Tribunal on the following terms:

TERMS OF SETTLEMENT

1. The First Party agrees to pay an amount of Rs. 3,00,000 (Rupees Three Lakhs only) to the Second Party in full and final settlement of all her dues, claims and demands against the First Party.
2. The Company has paid the amount of Rupees Three Lakhs by way of Cheque No. 549812 dated 1-11-2012 drawn on IndusInd Bank Limited on the date of signing this settlement.
3. The Second Party has accepted the above amount of Rupees Three Lakhs from the First Party Company in full and final settlement of all her dues and claims including the demands raised by her in Reference (IT) No. 33 of 2006 which is pending before this Hon'ble Tribunal. It is declared that all the claims and demands of the Second Party in the said Reference stands fully and finally settled and satisfied.
4. The Second Party hereby agrees and declares that upon receipt of the payment as above all her claims, dues and demands of whatsoever nature including that of reinstatement, re-employment, backwages, bonus, leave, gratuity, consequential benefits etc., are fully and finally settled and satisfied.
5. The sum of Rs. Three Lakhs payable to the Second Party shall be spread over the period from 16-4-2005 till the date of signing this settlement towards backwages and other salary benefits for the purpose of Income Tax Act.
6. The Second Party further declares that she has no further claim of whatsoever nature against the Company and all her claims against the Company are hereby settled.

The parties submit and pray that this Hon'ble Court may be pleased to pass an award in terms of this settlement and the Reference may be disposed-off accordingly.

Signed at Mumbai, this 6th day of November, 2012.

For M/s. World Air Pvt. Ltd.

Sd/-

(Laxman Borkar)

Authorised Signatory

Sd/-

Advocate for First Party

Sd/-

(Keshwar Z. Khan)

Sd/-

Advocate for Second Party

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 103.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, धनबाद के पंचाट (आई डी संख्या 195/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/105/1997-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 195/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/105/1997-IR (C-1)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2),
AT DHANBAD

PRESENT:

SRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

Reference No. 195 of 2000

PARTIES:

Employer in relation to the management of Bahihari Colliery of M/s BCCL and their workmen.

APPEARANCES:

On behalf of the workmen : None

On behalf of the management : Mr. D. K. Verma, Ld. Adv.

State : Jharkhand. Industry : Coal

Dated, Dhanbad, the 27th November, 2012

AWARD

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/105/97-IR (C-I) dated 27-11-2000.

SCHEDULE

"Whether the denial of regularisation of the services of Shri Mahabir Yadav and 11 others (as per list enclosed) by the management of Balihari Colliery, BCCL is justified? If not, to what relief are these workmen entitled?"

2. None appeared for the Union-Dhanbad Colliery Karmchhari Sangh/workmen Shri Mahabir Yadav and 11 others nor any witness for the evidence of the workmen produced despite ample opportunities in this Reference Case related to regularisation. Mr. D. K. Verma, the Learned Advocate for the management is present.

From the perusal of the case record, it clearly appears the pendency of the case pending for the evidence of the workmen since 12-7-2005 for which ample opportunities were given in addition to the issuance of the Registered notices dt. 4-4-2012 and 30-7-2012 to the Secretary of the Union on his address noted in the Reference itself. But neither the Union Representatives nor any of the workmen concerned appeared for the evidence of the workmen. It directly implies the disinterestedness not only of the Union Representatives but also of the workmen in pursuing the case.

Under these circumstances, the case is closed for default of the Union/workmen and accordingly an Award of no Industrial Dispute existent is passed.

KISHORI RAM, Presiding Officer

ANNEXURE

1. Sri Mahabir Yadav S/o Sri Ram Dhyani Yadav
2. Sri Chatelal Singh S/o Sri Ram Lakhan Singh
3. Sri Sunil Kumar Sinha S/o Sri Ramji Lal
4. Sri Jai Kumar Jha S/o Late Chulahai Jha
5. Sri Abhisekh Kumar S/o Late Mahendra Kishore Prasad

6. Sri Ashok Prasad S/o Kameshwar Prasad

7. Sri Rajiv Kumar Singh S/o Sri Jang Habadur Singh

8. Sri Ranapratap Singh S/o Sri Ram Ser Singh

9. Sri Rajendra Prasad S/o Sri Madan Lal

10. Sri Ashok Prasad S/o Late Lakhan Prasad

11. Sri Santosh Kumar Singh S/o Sri Kunj Bihari Singh

12. Sri Jayant Kumar S/o Sri Sant Babu Kunwar

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 104.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, धनबाद के पंचाट (आई डी संख्या 118/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/241/2000-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 104.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 118/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/241/2000-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2),
AT DHANBAD**

PRESENT:

SRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 118 of 2000

PARTIES:

Employer in relation to the management of Bastacolla Colliery of M/s BCCL and their workmen.

APPEARANCES:

On behalf of the Workman : Mr. D. Mukherjee, Ld. Adv.

On behalf of the Management : Mr. U. N. Lal, Ld. Adv.

State : Jharkhand. Industry : Coal

Dated, Dhanbad, the 30th October, 2012

AWARD

1. The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/241/2000 -I. R. (C-I) dated 27-9-2000.

SCHEDULE

“Whether the action of the management of Bastacola Colliery of M/s BCCL in not giving the designation of Electrician and not paying wages to Sri Umar Prasad w.e.f. 1989 is legal and justified ? If not, to what relief the concerned workman is entitled and from what date ?”

2. None appeared for the Union workman Umar Prasad nor any witness for the evidence of the workman produced despite ample opportunities. Mr. U. N. Lal, the Learned Advocate for the management is present.

Perused the case record. It stands clear the case has been pending for evidence of workman since 31-3-2004 for which the Regd. notices earlier and latest ones dt. 26-8-2011, 21-1-2012 were issued to the Secretary, B. C. K. U., Hirapur, Dhanbad on its address but despite ample opportunities not a single witness has been produced so far. The Conduct of the Union Representative as well as that of the workman shows none is willing to pursue the case. Under these circumstances, the case due to disinterestedness of the union/workman in pursuing it, is closed; and accordingly it is passed an Award of no industrial dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 105.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, धनबाद के पंचाट (आई डी संख्या 99/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/121/2000-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 105.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/121/2000-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2),
AT DHANBAD**

PRESENT:

SRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

Reference No. 99 of 2000

PARTIES:

Employer in relation to the management of Sudamdih Incline Mine of M/s BCCL and their workman.

APPEARANCES:

On behalf of the Workman : Mr. J. N. Das, Ld. Adv.

On behalf of the Management : Mr. D. K. Verma, Ld. Adv.

State : Jharkhand. Industry : Coal

Dated, Dhanbad, the 30th Nov., 2012

AWARD

1. The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/121/2000 -I. R. (C-I) dated 14-9-2000.

SCHEDULE

“Whether the action of the management of Project Officer, Incline Mine (Sudamdih) of M/s. BCCL in not referring the case of Sri Pran Kishto Modak to the Apex Medical Board for determination of his age as per Implementation Instruction No. 76 of JBCCI is justified ? If not, to what relief is the workman entitled ?”

2. The case of workman Pran Kishto Modak as sponsored by the Union concerned is that as per the

appointment letter No. W/PST/62 dt. 9-7-1962 under Land Loser Scheme, he was employed after his medical examination and working. He was issued his date of birth (DOB) as 31 years as on 1-1-1977. The management prepared his service excerpt on 7-6-1987, entering his Date of Birth wrong as 1-7-1941. He seriously objected to it as per his representation dt. 17-8-1987 to the Dy. C. M. E./P. O. Incline Mine, Sudamdih emphasising his date of birth as 1-1-1946. Despite his reminder on 19-12-1990 with a copy to the General Manager (SA) for it, it went in vain. The Project Officer concerned as per his letter No. 3648/SMD/INC/F/CMPPF/99 dt. 1-10-1999 had admitted before the ALC (C), Dhanbad that the workman was referred to the Apex Medical Board for assessment of his age/date of birth. This was a simple case of violation of Instruction No. 76 of the J. C. C. C. I. But despite his retirement due in the year 2006 in view of the said admitted fact, the management as per office order No. 5894-96/INC/F/58/00 gave him the notice of his retirement w.e.f. 30-6-2001 during the pendency of the proceeding. Later on the Project Officer as per the letter No. 2304-05/SMD/INC/SPA/F-50/2KI dt. 1-6-2001 terminated the service of the workman in violation of the provision of the Industrial Disputes Act. The Union in its rejoinder with specific denials has pleaded that the workman objected to it as soon as the discrepancy came to his knowledge. The Management did not produce the original Form 'B' Register or Service Excerpt of the workman produced rather another concocted document in order to harass him as he was initially appointed in Sudamdih Incline Mine on 9-7-1962 prior to Nationalisation of the Coal Mines.

3. Whereas with categorical denials, the contra pleaded case of the management is that the date of birth (DOB) of the workman was recorded as 1-7-1941 in the Form B Register at the time of his appointment as also in his Service File and he put his signature/thumb impression on the said Register as token of acceptance of his date of birth. The Register is maintained under the Mines Act, and the entries made therein are final for all purposes. The workman had not raised any objection to it at the relevant time or even while he was served his Service Excerpt in 1987. He did not produce any document of his date of birth before the management or the Conciliation Officer in support of his claim. As such the Statutory Record and the Service File of the workman had not any discrepancy about his date of birth (DOB).

Further in its rejoinder, the manager has alleged that the age mentioned in the Identity Card Register is not an authentic document for determination of any workman's Date of Birth.

FINDING WITH REASONING

4. In this case, only WWI Pran Kishto Modak, the workman himself, has been examined on behalf of the Union, but despite more than sufficient opportunity since 10-5-2005, the management failed to produce and examine

any witness for the management, so its further prayer for an adjournment for evidence of its witness was rejected on 30-11-2011; hence, it came up for hearing argument.

The statement of WWI Pran Kishto Modak the workman himself transpires that he was appointed as Carpenter at Sudamdih Colliery on 7-9-1962 and his age was recorded as 31 years in his I.D. Card issued to him in the year 1977 since he superannuated and surrendered his I.D. card to the management so the copy of his I.D. marked as Ext. W.1. His further statement is that when he received his Service Excerpt from the Management in the year 1987, he learnt his date of birth (DOB) recorded therein as 1-7-1941 (Ext. W. 2) which was wrongly recorded and thereafter he represented to the management as per his representations (Exts. W. 3-3/2) that his date of birth as 1-7-1946 but not as 1-7-1941 and even thereafter it was not rectified, hence the I.D. was raised for adjudication. It is further alleged that during the pendency of the dispute the management referred his case to the Medical Board for assessment of his age but subsequently he was not referred to it in that regard. So his retirement was due in the year 2006 according to his date of birth (DOB). The workman has proved a copy of the reply by the Project Officer, Incline (Sudamdih) marked as Ext. W. 4 which was submitted before the ALC(D), Dhanbad-III in respect of the I.D. raised by the Union, but the workman appears to have returned back his service excerpt duly signed by him but without any remark about his wrongly recorded date of birth therein. The workman has though admitted his initial appointment under N. C. D. C., yet unable to say if N.C. D. C. is a Govt. organisation or not. Denying his date of birth recorded in all original records maintained by the management as 1-7-1941, the workman has also admitted not to possess any document to show his claimed date of birth except his Identity Card.

5. In the light of the aforesaid facts, Mr. J. N. Das, the Ld. Advocate for the Union/workman has submitted as per his written argument that the workman was given employment under the Land Loser Scheme in the year 1962 and at the time of employment he was medically examined by the Board of Medical Officers and his date of birth was determined. Further his submission is that after the nationalisation of the collieries all the documents including his I.D. card were seized by the BCCL Management from the workman and a fresh I.D. Card was issued by the Management of BCCL to all workmen in the year 1977 in which his date of birth was recorded as 31 years, as on 1-1-1977; likewise his Service Excerpt issued by the Management to the workman on 7-6-1987 bearing the same date of birth namely 1-7-1941 which was wrongly recorded but the workman's date of birth was not corrected by the management despite representation which amounted to violation of the Implementation Instruction No. 76 of NCWA-III.

6. On matulous study of the materials as produced on behalf of the workman, I find his Service Excerpt (Ext. W. 2) bears his date of birth as 1-7-1941 and his date of appointment as 9-7-1962 but it does not mention his age as 31 years as stated by the workman. The service excerpt is duly signed by the workman in Bengla language, without any remark of his protest. According to his Service Excerpt, his date of birth is 1-7-1941 and his appointment as T. R. W. Inclined on 9-7-1962 but his I.D. bearing his age 31 years as on 1971 which is not a statutory record as contrasted with the Service Excerpt prepared on the basis of the Form-B Register, the statutory register maintained by the management. In view of the aforesaid findings, the argument of Mr. Das, the Ld. Adv. for the Union/workman appears to be untenable.

In result, it is held that the action of the Management of Project Officer, Incline Mine (Sudamdih) in not referring the case of workman Pran Kishto Modak to the Apex Medical Board for determination of his age as per Implementation Instruction No. 76 of J. B. C. C. I. is quite justified, as it was not at all required in view of the admission of the workman about his date of birth (DOB) as recorded in his statutory record. Hence, the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 106.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, धनबाद के पंचाट (आई डी संख्या 112/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/106/2005-आई आर (सी-1)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 106.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 20-12-2012.

[No. L-20012/106/2005-IR (C-I)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

SRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

Reference No. 112 of 2005

PARTIES:

Employers in relation to the management of Sudamdih Shaft Mine of M/s BCCL and their workmen.

APPEARANCES:

On behalf of the Workmen : None

On behalf of the Management : Mr. U. N. Lal, Ld. Adv.

State : Jharkhand.

Industry : Coal

Dated, Dhanbad, the 6th November, 2012

AWARD

1. The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/106/2005-I. R. (C-I) dated 19-12-2005.

SCHEDULE

“Whether the demand of the Rashtriya Colliery Mazdoor Congress from the Management of BCCL, Sudamdih Shaft Mine that S/Sh. Jokim Lakra, Juel Tigga and Ram Prasad Baitha may be granted SLU to T and S Gr. F with notional firmment w.e.f. 1-1-1996 and actual financial benefit w.e.f. 1-1-1997 and that may be granted next SLU to T and S Gr. E w. e. f. 1-1-2004 with all consequential benefits, justified ? If so, to what relief are the workmen entitled ?”

2. None appeared for the Union Rastriya Colliery Mazdoor Congress, R/o- Om Bhawah, workmen Jokim Lakra, Juel Tigga and Ram Prasad Baitha nor any witness for the evidence of the workmen produced despite sufficient opportunities. Mr. U. N. Lal, the Learned Advocate for the management is present.

Perused the case record. It reveals that the case has been pending for the evidence of the workmen since 10-9-2012, for which Regd. notices dt. 10-9-2012 as earlier ones dt. 19-10-2010 and 15-5-2012 were issued to the Union, though the case remained pending earlier for filing

documents by both the parties. Since the Union/workmen seem to be uninterested to pursue the case for final adjudication, so the case is closed; accordingly an order of Award is passed as no industrial dispute exists.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 107.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. आई. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, धनबाद के पंचाट (आई डी संख्या 25/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/73/1993-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 107.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/1994) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. C. I. L. and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/73/1993-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

SRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

Reference No. 25 of 1994

PARTIES:

Employer in relation to the management of Coal India Ltd. and their workman.

APPEARANCES:

On behalf of the Workman : None

On behalf of the Management: Mr. D. K. Verma, Ld. Adv.

State : Jharkhand.

Industry : Coal

Dated, Dhanbad, the 8th November, 2012

AWARD

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20025/73/1993 -I. R. (Coal-I) dated 12-1-1994 and subsequently dt. 17-3-2003.

SCHEDULE

“Whether the demand of Shri Bharat Rai for placing him in any post of Gr. ‘E’ either Asstt./Surveyor/Asstt. Surveyor (untrained) or any other post of equal status by the management of Coal India Ltd. and pay him wages which would have been made to him under various National Coal Wage Agreements since 19-11-1991, in pursuance of the Award given by CGIT (No. 2), Dhanbad in Ref. No. 2 of 1975, is legal and justified? If not, to what relief the workman is entitled to?”

2. None appeared for the workman Bharat Rai nor any witness for the further evidence of the workman produced despite several opportunities since 22-1-2008, Mr. D. K. Verma, the Learned Advocate for the management is present.

The perusal of the case record reveals that DWI Bharat Rai, the workman himself was partly examined in chief twice on 11-7-2002 and 13-5-2006 since thereafter it has been pending for further examination in chief, despite Regd. notices latest dt. 9-12-2012 and 8-5-2012, he failed to appear for his further chief. The very conduct of the workman clearly denotes, he is not willing to pursue his oldest case of the year 1994 relating to his claim for posting in Gr. E as Asstt. etc. Under these circumstances the case is closed, as no industrial dispute exists; therefore, it is passed an order of no dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 108.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 14/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/291/1999-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 108.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/291/1999-IR (C-I)]
B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Sri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 14 of 2000

PARTIES :

Employer in relation to the management of
Kustore Area of M/s. BCCL and their workman.

APPEARANCES :

On behalf of : Mr. P.N. Singh, Ld. Advocate;
the workman

On behalf of : Mr. D.K. Verma, Ld. Advocate;
the management

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 20th November, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L.-20012/291/99-IR (C-I) dated 21-1-2000 :

SCHEDULE

“Whether the action of the management of Kustore Area of BCCL in denying wages and categorization of Sh. Abdul Rahman as Motor Winder Cat. V is justified? If not, to what relief is the workman entitled and from what date ?”

2. The brief of the workman Abdul Rahman as sponsored by the Union concerned is that he was, working as Motor Winder since his appointment in Kustore Central Workshop of M/s. B.C.C.L. Though he was stopped from working from June, 1976, he was resumed to work as Motor Winder since 10th December, 1982 as per the Award by the

Central Government Industrial Tribunal No. (2), Dhanbad in Ref. No. 108/79. But in stead of placing him in Cat. V, and of fixing his wage as a Motor Winder (Armature one), his wage was fixed in Cat. I while implementing the Award despite discussion with the management to that effect. At last the failure due to adamancy of the management in the conciliation in the Industrial Dispute raised by the Union resulted in the Reference for adjudication.

3. Further the case of the workman in the amended supplementary pleading is that when the workman remained idle for a year due to reluctance of the employers in implementation of his award, on prosecution of the R.L.C. (C), Dhanbad, he was re-instated as a Motor Winder in Cat. I with pay scale as per the Office order dt. 27/28-12-1982 at the Central Workshop, Ekra of Bhagabandh Area (Now called Putkee Balihari Area of M/s. BCCL). Since the employers of BCCL Hq. which undertook the liability of Kustore Area under the Award in the I.D. under Ref. No. 108/79, and the Bagabandh Area (P.B. Area) were reluctant to implement the Award about his demand for his wages for the Cat. V since the Coal Mines Nationalization Act 1973 w.e.f. They ought to be summoned in the present proceeding in order to implement it as per terms of the Award, because he had put in more than 240 days attendance in every calender year qualifying for regularisation as a permanent workman since his appointment as a Motor Winder in the Kustore Central Workshop of erstwhile M/s. Rameganga Coal Association Ltd. in 1964. Even the B.C.C.L. kept him as a temporary/casual Motor Winder on wages of Cat. I till 1975 even thereafter. At his agitation for regularisation and payment of rightful wages for Cat. V, the employers abruptly stopped/retrenched from work w.e.f. 1-6-1976 without any notice. The job nomenclature of Motor Winder Standardised as Armature Winder (Gr. I) with Cat. VI pay scale. The workman, a skilled worker, has been working accordingly since 1984, as he has got proficiency Certificate from I.T.I., Dhanbad under Advanced Vocational Training System for it. Though the H. Qr. had been agreeable to upgrade and wages payment for Cat. V pay scale only with prospective effect, the workman unaccepted it. The Employer did not upgrade even under Service Linked Upgradations as per the Scheme of the J.B.C.C.I. which provides for four upgradation at least in the full length of service of a workman. His juniors in Kustore Area or the BCCL have been granted timely promotion from Cat. V upwards, so his claim for Cat. V wages with all relevant financial benefits with compound interest 8.5% for his idle period from 1-6-1976 to 9-12-1982 is also justified. As the action of the employers in denying the proper categorisation and wages in view of nature of his job is illegal and unreasonable, as it is unfair labour practice.

The workman in his rejoinder has categorically denied the allegations of the management, pleading that the Award was published on 17-9-1981 in Ref. No. 108/79, and the

workman offered to join before 17-11-1981, but he was not allowed to join, nor wages paid for his idle period from 17-11-1981 to 8-3-1983 due to non-implementation of the Award.

4. Whereas with specific denials, the case of the management is that the workman was not the employee of the Central Workshop, Kustore, and the terms of the present reference being too vague for adjudication in view of the award dt. 17-9-1981 passed in Ref. No. 108/1979, which reads as under :

"I, therefore, hold that the demand of the workman of the Central Workshop of Kustore of M/s. BCCL, PO : Kustore, Distt. Dhanbad that Md. Abdul Rahman Motor Winder should be allowed to join duty is justified. But I feel no justification of allowing him wages for the idle period calculating from June, 1976. The concerned workman presents himself within a period of one month from the publication of this Award, failing which he will not be entitled to be re-instated."

The workman concerned was posted at EKRA Workshop of Bhagabandh Area by the Dy. Personnel Manager (Manpower), Karmik Bhawan. After re-instatement in M/s. Bharat Coking Coal India Ltd., the workman never worked in Kustore Area. Many of the workmen are not available in the record of the Central Workshop at Kustore. Since the workman is bound by the said Award, so he is not entitled for the wages for the period from 1-6-1976 to 9-12-1982, as it is hit by the principle of Res. Judicata. As in lack of provision for the capacity and the grade the workman was working in what capacity, the management allowed him in Cat. I. Besides that the workman has not made appropriate party for a relief, so no relief for wage period from 1-6-1976 to 9-12-1982 is grantable against the management, because the Tribunal has already held in Ref. No. 108/97 that the workman failed to produce a chit of paper to prove actually what wages he had drawn during the period of 1971 to 1976, but the Union is trying to reopen the same issue already decided by the Tribunal. The present Reference stands liable to be dismissed on the admitted fact of the workman still working in Ekra Central Workshop of P.B. Area of M/s. BCCL.

FINDING WITH REASONING

5. In this case, WW1 Abdul Rahman, the workman himself, WW2 Bishenwar Singh, Retd. as Ex-Motor Winder for the Union, and MW1 Subodh Kumar Patra, Sr. Manager (Pers), Kustore Area for the Management have been examined.

Mr. P.N. Singh, Learned Advocate for the Union/Workman concerned submits as deprived by the workman

(WW1) that in order to implement the Award (Exts. 2, 2/1) of previous Ref. Case No. 108/1979 following the prosecution letter dt. 21-10-1983 of the R.L.C. (C) Dhanbad (Extt. W.1 & W.3, both same), workman Md. Abdul Rahman as Motor Winder of the Kustore Central Workshop reported to the Chief Engineer (Excavation) Vikash Bhawan, Bhuggatdih as per his joining report (Ext. W.6) in pursuance of the office order dt. 2-12-1982 for his duty; later on as per the office order dt. 27/28-12-1982 of BCCL, Director of Personnel Karmik Bhawan, (Ext. W.5), he was accordingly but immediately transferred to and posted at the Central Workshop, Ekra under Bhagabandh Area, (the Office order dt. 13-1-1983 Ext. W.7), thereafter workman Abdul Rahman as Armature Winder (Cat. 1 C) Joined at Kenduadih Workshop on 10-3-1983 on his posting as per the office Order dt. 10-3-1983 of Kenduadih Colliery (Ext. W.8), where the BCCL Management arbitrarily recorded his appointment date 9-3-1983 as Motor Winder in place of his actual date of birth 17-10-1971 in his Service Excerpt (Ext. W.11), and accordingly he was retired on 31-1-2007 as per the Notice dt. 24-8-2006 of the Ekra Workshop (Ext. W.13), that his two Pay Slips dt. 21-12-2007 and Dec., 1983 (Extt. 12 & 12/1 respectively) prove though his designation as Motor Winder, yet his categorisation in Cat. I in place of V/VI wages; though he had the Advance Vocational Certificate from ITI, Dhanbad (Extt. 9 & 10), so despite his being entitled to the wages of his designation and working as Motor Winder for 10-10-81 to 30-8-1989, he was deprived of S.L.U., otherwise of the wages of Grade VI for the period 1-7-1989 to 30-6-1997, and of the Salary of Tech. Gr. 'C' for the month of July, 1997, and the Salary of Tech. Gr. 'B' with interest for the period 1-1-2006 to 31-1-2007, though represented for it through the Union in 1989-1998.

6. Whereas Mr. D.K. Verma, the Learned Advocate for the management, has contended that the present case suffers from misjoinder of a party, as the Kustore Area is/was not an appropriate party while the workman was admittedly working in P.B. Area which was not made a party to it at the time of raising the dispute; secondly that admittedly the previous Reference/Award (Ext. W.7/1) did not refer to any categorisation, so he was correctly regularised in Category I, and he had not got any office Order for working as Cat. V factually, he (workman) has not made the P.B. Area XII a party to it while working there at the time of raising the present Reference. (Para 19 and 20 of WW1) as such no case is made out for the workman's claim, as motor winder is temporary.

According to the statement of MW1 Subodh Kumar Patra, Sr. Manager (Personnel), Kustore Area as per the Award of Reference No. 108/79, the workman was reinstated in his service at the Ekra workshop, which does not come under the Kustore Area so the workman's claim for wages and categorisation as Motor Winder in Cat. V in the present Reference is not justified. But the witness has admitted

that in the aforesaid earlier Reference the management of Kustore Central Workshop of M/s. BCCL was made a party to it and the Company implemented the Award of the workman who was posted at Ekra Workshop accordingly. This management witness as the Sr. Manager (Personnel) of Kustore Area all along has awfully in his cross examination expressed his ignorance of the fact whether the nomenclature of Motor Winder comes under Cat. V as well as about the long sufferings of the workman all along due to irregularities of the management of Kustore Area. His statement is that the workman joined at Ekra Workshop/ the Company, expressing his ignorance of it at whose order.

7. On the perusal of the materials as produced by the workman as contrasted with the statement of the aforesaid Management witness, I find the workman had submitted his joining report dt. 10-12-1982 (W.6) in pursuance of the office order No. BCCL : PA-I/00/82/545/67583-87 dt. 2-12-1982 of the Personnel Manager (MPE), Karmik Bhawan, Saraidhela, Dhanbad (Ext. W4) and thereafter in supersession of the office order, the workman Md. Abdul Rehman, Motor Winder was posted to Central Workshop, Ekra with immediate effect as per the order of the Personnel Manager of Karmik Bhawan dt. 27/28-12-1982 (Ext. W.5) and just thereafter in modification of the aforesaid office order dt. 27/28-12-1982, the workman was posted at Ekra Workshop under Bhagabandh Area (known as P.B. Area) whereas per the office order of Kenduadih Colliery, BCCL dt. 10-3-1983 (Ext. W.8) in reference to the letter dt. 5-3-1983 of the Personnel Manager, Bhagabandh, the workman, Armature Winder Cat. I was deputed at Kenduadih Workshop. But the service Excerpt of the workman (Ext. W. 11) mentions its preparation under the seal and signature of the Supdt. Engineer (E&M), Ekra Workshop, PB Area, BCCL on 18-1-1997, but it does not mention his designation just as Pay Slip of workman for Dec., 1983 (Ext. W.12/1) whereas his Two Pay slips for 21 Dec. -20 Jan. 1999 and accordingly for the year 2007 referred to his designation as "M. Winder" in its proper columns. This clearly indicates the working of the workman as Motor Winder at Ekra Workshop under Bhagabandh Area as per the aforesaid modified office order dt. 13-1-1983 by Dy. Personnel Manager (MP) of Karmik Bhawan (Ext. W.7), following his joining report on 10-12-1982 (Ext. W.6) to the Chief Engineer, Vikas Bhawan, Bhagtdih in pursuance of the office order dt. 2-12-82 of Personnel Manager (MP)E of Karmik Bhawan (Ext. W.4) in implementation of the Award of the Tribunal dt. 17-9-1981 in the previous Reference No. 108/1979 (Ext. W.1) which was notified by the Government of India, New Delhi as per its notification dt. 25-9-1981. But at the end of his service the workman Md. Abdul Rehman was issued the notice of his retirement at his sixty years age as on 20-01-2007 (Ext. W.13) ; and this notice dt. 23/24-8-2006 was issued by the Supdt. Engineer, E&M, Ekra Workshop of the BCCL, showing his designation as Armature Motor Winder Helper.

8. It is pertinent to mention that the aforesaid authority of BCCL, initiated on prosecution by the RLC (C), Dhanbad as apparent from the letter dt. 21-10-83 (Ext. W.1) issued to the workman for his evidence in the case No. I.D.-7/81 against the management of Kustore Central Workshop of M/s. BCCL pending before the Court of Shri R. Narayan, J.M. 1st Class, Dhanbad in connection with his non implementation of Award of his previous Ref. No. 108/79. In the present case/Reference the same Kustore Area of M/s. BCCL is the party in the matter of denial to his wages and categorisation. From the perusal of the aforesaid documentary materials, it clearly signifies how the aforesaid authorities of Karmik Bhawan misdealt with the case of the workman reducing his stature/status to that of Armature Motor Winder Helper in a creptic manner for which the aforesaid authorities of the BCCL are mainly responsible for non payment of his due wages and categorisation of his due post of Motor Winder/Armature Winder during his long tenure service to the management.

9. Since it is a admitted fact of the workman that he could not make the P.B. Area as a party to the Reference where from he has retired now from Ekra Workshop under the P.B. Area, of M/s. BCCL, so the case suffers from misjoinder of the parties concerned. But in view of the nature of the Reference it would be not only just and proper but also judicious to hold the aforesaid authorities namely the Personnel Manager (MP) E, Dy. Personnel Manager of the Karmik Bhawan of BCCL to look into the case of the workman as to his wages and categorisation of his work as Motor Winder at Ekra Workshop of the BCCL.

10. In result in view of the aforesaid findings I find and hold that the question of action of the Management of Kustore Area of BCCL in denial the wages and categorisation of the workman as Motor Winder Cat. V. Just or unjust does not arise, because the Kustore Area of BCCL is or was not a party to the present Reference under adjudication, so the workman Abdul Rehman would not be entitled to his relief from Kustore Area BCCL from any date, but in view of the shifting liability of the management of the BCCL the Personnel Manager (MP & E) and Dy. Personnel Manager (MP) both of Karmik Bhawan towards the workman, it would be proper to consider the case of the wages and his categorisation of the workman on his fresh representation before the aforesaid both the authorities, namely, the Personnel Manager (MP) and Dy. Personnel Manager (MP) of Karmik Bhawan, Saraidhela, Dhanbad, as the workman has retired from Ekra Workshop of BCCL where his service excerpt was prepared as a permanent workman.

So far as the claim of the workman for the payment of back wages from the period 1971 to 1982 from the Kustore Area is concerned, it is untenable because it has no evidence for the relevant period. Moreover the backwages of the workman for idle period from June, 1976 was not

allowed by the Tribunal in his aforesaid previous Award. Hence his wages for idle period from June, 1976 is barred by the Principle of Res judicata under Sec. 11 of the Code of Civil Procedure.

Thus the Award is responded.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 109.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 192/2000 एवं 87/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/305/2000-आई आर (सी-1),
सं. एल-20012/423/2001-आई आर (सी-1)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 109.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 192/2000 & 87/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/305/2000-IR (C-I),
No. L-20012/423/2001-IR (C-I)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Sri Kishori Ram, Presiding Officer

Reference No. 192 of 2000

PARTIES :

Employer in relation to the management of Amlabad Colliery of M/s. BCCL and their workmen.

(Ministry's Order No. L-20012/305/2000-IR (C-I)
dt. 29-11-2000)

With

Reference No. 87 of 2004

PARTIES:

Employer in relation to the management of Amlabad Project of M/s. BCCL and their workmen.

(Ministry's Order No. L-20012/423/2001-IR (C-I)
dt. 29-11-2001)

Appearances in both the above cases :

On behalf of : Mr. S.C. Gaur, Ld. Advocate
Workman

On behalf of : Mr. U.N. Lal, Ld. Advocate
the Employer

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 30th October, 2012.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following disputes vide their Orders referred to above :

SCHEDULE

Reference No. 192 of 2000

“KAY PROJECT ADHIKARY AMLABAD COLLIERY DWARA SRI ANANDMOYEE CHATTERJEE KO UNKI 17-9-98 SE 1-12-1998 KE SEEVH ANUPASTHITHI KE PASHCHAT KAAM PAR NALIYA JANA UCHIT, NYAMANUSAAR AUR NYAYA SANGAT HAI? YADI NAHIN TO KARMAKAAR KIS RAAHAT KE PATRA HAIN?”

Reference No. 87 of 2004

“Whether the stand of the management of BCCL Amlabad Project in dismissing Sri Anand Mayee Chatterjee from service of BCCL w.e.f. 17-8-2000 is justified? If not, to what relief is the workman entitled?”

2. The Reference Case No. 192/2000 relates to an issue about non-resumption of duty. The case of the workman Anand Mayee Chatterjee as sponsored by the Union concerned is that he was permanent Piece Rated Mines Loader of Amlabad Colliery of M/s. BCCL. He was ill and under treatment at the Company's Central Hospital, Jealgora from 17-9-1998 for allied treatment, after his reference by the Colliery Medical Officer. After his recovery as per the Fitness Certificate of the Physician of the aforesaid Hospital, he went to join his duty on 4-12-1998, but the Colliery Manager in stead advised to come on the following day, just as he (the manager) continued to carry his resumption of duty/slip from 5th to 6th December, 1998. Though the workman gave in writing to the management with its intimation to the General Manager, the Director (Pers.) and C.M.D. of the M/s. BCCL for his

duty on 9-12-1998, yet of no avail upto the failure in settlement for it before the A.L.C.(C) even after more than one year of the Industrial Dispute till 20-7-2000 his forced idleness; it lastly resulted in the reference for adjudication. So his claim is alleged entitlement to the resumption of his duty w.e.f. 17-9-1998 with full back wages, as the action of the management in reasonlessly keeping him under forced idleness was unjustified.

3. In its rejoinder, the Union concerned by specific denials has pleaded that the allegation of the workman's dismissal by the management after a fair enquiry is beyond the terms of the Reference.

4. Whereas the contra case of the management with categorical denials is that since the reply of the workman to his charge sheet dt. 17-12-1998 for his unauthorised absence from duty since 16-9-1998 was found unsatisfactory, the enquiry was set up and held by Sri R.N. Prasad, the Enquiry Officer in accordance with the rules of natural justice. The workman fully participated in it. The Enquiry Officer found the charges proved against him. The workman on furnishing a copy of the enquiry report failed to submit his any reply. So he was dismissed from the service of the Company by the Project Officer, Amlabad Project as per letter dt. 19-8-2000 with the approval of the Competent Authority. The Industrial dispute as raised by the Union concerned before the A.L.C.(C), Dhanbad is beyond the dispute.

The management in its rejoinder pleaded that the concerned workman was not given sick leave from Amlabad Dispensary. Since he was already dismissed from his service, no question of allowing him to join duty arose. Any punishment other than his dismissal would seriously hamper the production of coal, and affect the enforcement of discipline among the workmen of M/s. BCCL.

5. The case of the sponsoring union for the workman in the Ref. Case No. 87/2004 (earlier No. 262/2001) related to his dismissal is that he was given the appointment on compassionate ground in place of his father, who had died while in service. In September, 1998, the workman was admitted and under treatment of the B.C.C.L.'s Jealgora Central Hospital at Dhanbad from where after declaration of his fitness for duty, he had reported the Management with Medical Certificate to take up his usual job of Miner/Loader, but he was not allowed to join his duty, for which he had regularly represented to the Management, but in the month of the December, 1998, he was issued a baseless charge sheet for MINOR penalty. Though he had satisfactorily replied to it, the enquiry was got held by the

management through the Enquiry Officer, before whom he had produced his evidence of illness and treatment as Indoor and outdoor patient of the said Hospital, which were unconsidered by the Enquiry Officer. On the basis of the palpably wrong enquiry report, the management illegally dismissed him in August, 2000 contrary to the Certified Standing Order of the B.C.C.L. His mercy petition still remained unreplied by the management. The employer wanted to reduce man-power by hook or crook in order to get him out from his promotion etc. The action of the management is excessively harsh and unjust.

The Union in its rejoinder has categorically denied all the allegations of the management.

6. In contrary to it, the management with specific denials has contra pleaded its case that after due and fair domestic enquiry and proof of the charges for the unauthorised absence from duty, the management has justly and legally imposed upon him the penalty of his dismissal for his misconduct of his absenteeism.

7. In pursuance of the Ministry of Labour, Government of India's Order No. L-20012/423/2001-IR (C-1) dt. 17-5-2004, the Reference No.262/2001 on its transfer from the CGIT-cum-L.C. No. 1, Dhanbad came to the Tribunal No. 2, Dhanbad on 23-6-2004 and it was registered as Ref. No. 87/2004 for proceeding with the case from the stage it was left. The Ref. No. 87/2004 as per order dt. 16-2-2005 which was at the stage of the evidence of the Management at preliminary point, was tagged with the Ref. Case No. 192/2000 for analogous hearing expediting it as also observed by the Hon'ble High Court of Jharkhand at Ranchi as per order dt. 20-7-2011 passed in the W.P.(L) No. 5914/2005. According to the order of the Hon'ble High Court, the management was allowed to adduce evidence on preliminary issue, as it was earlier held up: "In the mean time, the Court below shall not deliver judgement as per the order dt. 28-2-2006 of the Hon'ble Court."

8. FINDING WITH REASONING

Finally, WW1 Anand Moyee Chatterjee, the workman on behalf of the Union, and MW1 Subhas Chandra Pal, the Personnel Clerk for the Management on merit have been examined.

The statement of the workman (WW1) is that on 17-9-1998 he fell ill and remained under treatment at Amlabad Colliery Hospital, and the management also referred him to Jealgora hospital for his better treatment as Indoor Patient, where he remained under treatment till 4-12-1998; thereafter when he went to resume his duty with the fitness certificate

issued by the Hospital Authority, the management did not allow him to join his duty despite his representations (copies marked as Exts. W.1 to 4), rather the management issued him the charge sheet for absence since 16-8-1998 to which he had though replied, yet it was unaccepted; he had participated in the enquiry, after which he never got any relief from the management.

9. The perusal of the evidence of MW1 Subhas Chandra Pal, Personnel Clerk of Colliery reveals the fact of the domestic enquiry into the charge (photocopy of the chargesheet—Ext. M.1 (with objection) as per the enquiry proceeding (Ext. M.4—six sheets), and the workman has submitted his reply (Ext. M.2) to the chargesheet, and after due and fair enquiry, Sri B.N. Singh, the Enquiry Officer submitted his Enquiry Report (Ext. M.3), and thereafter, he was justly dismissed as per the letter No. 7072-83 dt. 17/19-8-2000 of the Project Officer of Amalabad Colliery (Ext. M-5), while he (workman) was Badli Miner Loader, though admittedly he was permanently employed as M/Loader on 17-11-1993. The witness MW1 has tried to justify the dismissal of the workman on the ground of unpleaded evidence of his previous absenteeism and four times warnings, so the unpleaded evidence is inadmissible in the eye of Law.

10. Highlighting both the cases namely the present Reference No. 192/2000 and Reference No. 87/04 as analogous of the Union concerned for the same workman Anand Moyee Chatterjee, Mr. S.C. Gaur, the Ld. Advocate for the Union submits that the action of the management of dismissal towards the workman was quite illegal because there was neither his absence wilful nor unauthorised absence from his duty rather his absence was due to his illness all along to the knowledge of the management. He has relied upon 2012 (2) JLR 129(SB), Pandav Kumar Vs. Union of India, in which it has been held by the Hon'ble Court that 'absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful : there may be different eventualities due to which an employee may abstain from duty including compelling circumstances beyond his control like illness, so disciplinary Authority is required to prove that absence is wilful, but absence of such findings, absence will not amount to misconduct, as such the dismissal order was quashed and petitioner was ordered to be reinstated' (paras 11, 15 and 19).

11. Whereas on the other side the Management has to contend that since the workman was previously four times chargesheeted, and was accordingly warned, resulted

in his placement as Badli M/Loader. Further it is submitted on behalf of the management that his dismissal from service was quite justified in view of the fact that he was all along a habitual absentee. Unfortunately any habitual absenteeism of the workman orally proved by MW 1 Subhash Chandra Pal on behalf of the management in absence of such pleadings in any of the cases of the workmen is inadmissible as already pointed out.

On the consideration of the materials of both the parties available on the case record, I find the workman has all along justified his absence from duty for his illness for the relevant period which was to the knowledge of the Management, so his absence was not wilful, rather it seems beyond his control. It also appears that the workman had also produced his Medical Certificate issued by the Doctor concerned treating him but it was unconsidered by the management for his alleged unauthorised absence. Considering all the aforesaid facts, it stands evident that the argument of Mr. S.C. Gaur, the Ld. Advocate for the union concerned appears to be quite reasonable in view of the aforesaid Rulings as well, which holds good with the present facts of the both the cases.

12. In result the References are responded in their terms respectively as such :

In respect of the present Reference No. 192/2000, it is held that the action of the Project Officer, Amalabad Colliery refusing workman Anand Moyee Chatterjee to resume his duty after his absence from 17-9-1998 to 1-12-1998 is not proper as per rule and quite unjust. So the workman is entitled to his resumption of his duty, and in respect of Reference No. 87/2004 (Analogous) it is held that the stand of the Management of M/s BCCL, Amalabad Project in dismissing workman Anand Moyee Chatterjee from service of BCCL w.e.f. 17-8-2000 is quite illegal and unjustified. So the workman is entitled to his reinstatement in his service w.e.f. 17-8-2000 with full back wages along with all relevant financial benefits.

Therefore, the Management is directed to implement the Awards within two months from the date of its receipt after their publication by the Govt. of India, Ministry of Labour & Employment, New Delhi in Official Gazette.

The copies of the both the Awards be sent to the Government of India, Labour Ministry, New Delhi for information and needful.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का.आ. 110.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. एम. पी. डी. आई. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (आईडी संख्या 95/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/222/1991-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 110.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 95/1993) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CMPDIL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/222/1991-IR (C-1)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute U/s. 10(1)(d) of the I.D. Act, 1947

Reference No. 95 of 1993

PARTIES:

Employers in relation to the management of Central Mine Planning & Design Institute, Gondwana Place, Ranchi and their workmen.

AND

APPEARANCES:

On behalf of the Workman : Mr. A. Bhattacharjee,
Rep. of the Workmen/
Union

On behalf of the Management : Mr. B. K. Sinha,
Rep. of the Management

STATE : Jharkhand INDUSTRY : Coal

Dated, Dhanbad, the 27th November, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section

10(1)(d) of the I.D. Act, 1947, has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(222)/91-I.R. (Coal-I) dt. 6/7-7-1993.

SCHEDULE

“Whether the action of the management of M/s. Central Mine Planning & Design Institute Ltd. is justified in not regularising the services of Shri Basant Kumar Dahury even after employing him for more than 240 days in the year 1989 and thereafter intermittently? If not, to what relief the workman is entitled and from what date?”

2. At the very beginning, it is pertinent to note that the present Reference as per its schedule relates to only one workman Basant Kumar Dahury but as per its Corrigendum dt. 29-7-1993 refers to Nityanand and 16 others including aforesaid Basant Kumar Dahury. So it is taken up accordingly for adjudication.

The case of the sponsoring Union for the workman Basant Kumar Dahury is that as per the list with their employment date in para 1 of the written statement these workmen :

Sl. No.	Name(s)	Date of employment
(1)	(2)	(3)
1.	Sri Nityanand Dehury	13-7-89
2.	Sri Basant Kr. Dehury	10-4-89
3.	Sri Sarat Chandra Behera 'A'	26-4-89
4.	Sri Sarat Chandra Behera 'B'	22-4-89
5.	Sri Purna Chandra Singh	10-4-89
6.	Sri Sudarsan Sahu	13-6-89
7.	Sri Jaikishna Sahu	12-4-89
8.	Sri Sudam Raut	14-4-89
9.	Sri Trilochan Sahu	1-9-89
10.	Sri Sarat Chandra Sahu	15-5-89
11.	Sri Hadibandhu Bage	18-5-89
12.	Sri Bhagirati Sahu	10-4-89
13.	Sri Paban Sahu	15-7-89
14.	Sri Jugal Kishore Sahu	25-7-89
15.	Sri Pada Sahu	15-5-89
16.	Sri Bhabagarh Naik	23-4-89
17.	Haldar Sahu	02-6-89

have been continuously in employment as Casual General Mazdoor in the lowest Cat. I post under the N.C.W.A. since their own employment by the Central Mine Planning & Design Institute (CMPDI) under the Chief General Manager (Exploration) at their Exploration Camps at Koshala from their aforesaid respective dates but on periodical voucher payment by artificially and arbitrarily breaking their services.

The Exploration Department since its inception in 1958 and even after the constitution of CMPDI under the Central Government Orders dt. 27-9-1975 constituting Coal India Ltd. and its subsidiaries has always the policy for employment of persons as casual and their regularisation in Cat. I as also pleaded in the Counter Affidavit of the CMPDI filed in the Public Interest Writ Petition No. 9677/03, Nani Gopal Mitra Vs. Union of India & Others before the Hon'ble Supreme Court in which the management's statement was that local villagers on their insistence or pressure are employed in casual basis, and if they have continuously worked for more than a year and have got some experience, their names are forwarded to the Controlling Officer in-charge of the drilling Camps for their recommendations about their regularisation and categorisation, and that no question of denial or deprivation to these workers exists.

3. Further case of the Union is that the persons whom the CMPDI had alleged to have never worked on their affidavit of personal identification have been placed in Cat. I similarly favoured persons, not local, have been regularised but the workmen concerned on continuous service alternatively on Muster Roll payment and Voucher Payment continue to be deprived of it. After filing the aforesaid Writ Petition, the management began to employ casuals on alleged voucher payment for exploitation of labour, and used to provide favoured ones back door entry as done at Meeranagon. Just contrary to its affirmation before the Hon'ble Apex Court, the CMPDI at Meeranagar Drilling Camp, Rajasthan, undertook a work under the S & T Project No. 62 for one year, for which its chosen/favoured one from Ranchi, Dhanbad, Chandigarh elsewhere were transported there, and being highly qualified were employed on alleged voucher payment from April/May 1987, despite none of them putting in 240 days continuous service in any calendar year and their termination on the closure of the Camp, they were regularised in Category I on 3-10-1988 from their initial employment date, and were promptly recategorised. Many similarly employed persons including 15, 12 and 07 ones under Regional Institute No. IV of Kedla and of Piperwar both under Regional Institute No. III all junior to the workmen concerned were firely placed in Cat. I and then, regularised therein.

4. Further pleading of the Union is that in addition to 38 persons initially employed temporarily in drilling, 14 juniors as per the CMPDI's order dt. 4-8-1990, S/Shri Sunil Dutt and others never or once or twice worked on contract

for road making etc., twelve juniors as per order dt. 8-3-1991 w.e.f. 1-1-1991, eight at Govindpur Drilling Camp and 15 persons under Regional Institute No. IV all intermittently employed on contract, six juniors similarly employed as per Order dt. 14-3-1990, and 17 favoured and others total 200 persons and other ones working for a few days as noted in paras 14 & 15 of the written statement, and lastly six persons similarly employed in/after July 1992 on voucher payment as per Order dt. 23/24-2-1993 being V.V.I.P. candidates have been regularised in Cat. I. Besides that 17 contractual workmen as per consent award dt. 24-12-1991 in Ref. No. 36/1991 were placed in Cat. I w.e.f. 1-4-1991. Such continuous contractual employment deprives the workmen of the minimum wages and of benefits of Cat. I of NCWA. The non-classification of them as required under Standing Order No. 3 affects them as animal existence, depriving of their right under Art. 21 with Art. 14 and 16 I of the Indian Constitution. Such discrimination faithful and oppressive methods of exploitation adopted by the CMPDI are not legal tenable, and according its action are quite illegal. When their persistent demand for their regularisation as General Mazdoor in Cat. I under the NCWA became ineffective, at last the failure of reconciliation on 25-6-1992 in the Industrial Dispute raised as per letter dt. 3-4-1991 and finally as result of the aforesaid Writ Petition resulted in the Reference for adjudication. The workmen are entitled to their regularisation as per law.

5. In its rejoinder the Union categorically denied the allegations of the management, and pleaded that the CMPDI as a whole is one establishment of one employer wherein common seniority and promotion of all Workmen and Executives transferable to any establishment under it in India are centrally only with one Balance Sheet. The workmen employed on perennial jobs are working continuously, and about 2500 persons including the close relatives of influential Executive and Ministers without following the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act have been already regularised, and accordingly casual contractors and others were regularised since 1-1-1987. Admittedly the workmen were employed on alleged "emergent nature of jobs". Those workers having 240 days physical attendance is not only the yardstick, but forced idleness also count for continuous service. The management has to produce the Muster Rolls, Attendance Registers, Payment Vouchers and relevant documents from 1987. The Management illegally claim to have licence to gross unfair Labour practice of exploitation with a view to deprive the poor workmen of their human and constitutional right.

6. Whereas the contra pleaded case of the management with specific denials is that its establishment is not the owner of any Mine nor does it run any Coal Mine or produce coals so it lies not within the ambit of controlled industry as per notification dt. 5-1-1957 of the Labour

Ministry. It is not engaged in the manufacture, production of coal, coke or other derivatives as controlled industry. Rather, it is registered under the Bihar Shop & Establishment Act, 1953, with its Registration No. 13798/Ranchi. The dispute is unmaintainable. In fact, Sri Nityanand Dehury & 16 others in the case were engaged in emergent nature of job in exigencies in the period of April, 1989 to February, 1992 at Kosala Drilling Camp under Regional Institute of Management located at Bhubaneswar. But they never worked legally for continuous service by putting their attendance for 240 days. They were never the workmen of the management, as they were never employed in the management's company, so not any Industrial Dispute as u/s 2 (k) of the Industrial Dispute Act exists between an employer and the persons seeking employment under them. The management being a Government Company under Sec. 617 of the Company Act has to abide by the provision of Employment Exchange (Compulsory Notification of vacancies) Act, and in case of any permanent vacancy, the candidates are to be selected from amongst the candidates sponsored by the Employment Exchange. There is no employment policy as alleged by the Union. The Hon'ble Supreme Court has already disposed of the said Writ Petition on 20-2-1983. In recent past, it has been ruled out recruitment on the basis of registration in Employment Exchange and regularisation to the persons putting in more than 240 days of service. Any submission made in the writ petition no. 9677/1987 can not be relevant for an adjudication in the case. So far as the case of Ex-Meeranagar Camp is concerned, those engaged purely on casual basis who had completed 240 days attendance were considered for regularisation. The workmen referred in relevant para of the Written Statement of the Union have been engaged out of the Settlement dt. 7-10-1991 with the Union resulting in a consent Award in the Ref. No. 36/1991. It is beyond the relevancy for an adjudication in the reference.

7. Further case of the management is that different Regional Institutes/Drilling Camps exigently initially deploy local labourers on their persistent demand of their villagers for various work of intermittent nature, and by observing their merit and skill in the functioning of the Drilling Camp, their casual placement made on regular basis if they had acquired continuous experience, but subject to vacancy and requirement thereof. The claims of workmen concerned is incomparable to that of the permanent employees of the company, as the permanent workers are required to work under the supervision and control of the employer, for there is provision of reward and punishment, and adjudging performance; there is fixed hours. The alleged exploitation, depriving of regularisation and unfair labour practice are far from the real facts. Under the circumstances, the workmen can not claim for their regularisation in any capacity.

FINDING WITH REASONING

8. In this case, WW1 Nitya Nand Dehury, WW2 Sarat Chandra Behera on behalf of the Union, and MW1 Manoj Kr. Sahoo, MW2 Amitav Das, MW3 A. K. Mohanty, the Chief Manager (Geo) and MW4 Tulsi Das for the management have been produced and examined in support of their respective parties.

According to the statement of WW1 Nityanand Dehuri as also deposed for his co-workmen, they were engaged as casual labourers by Mr. T. D. Gaur, Incharge, Exploration Camp of C.M.P.D.I. at Kosala (Orissa) as per Muster roll (Ext. W1, the copy of casual workers from April, 89 to February, 1992), through which they were paid wages at Rs. 100-120 per day from the year 1990 to 1994; they though worked as helper in drilling Machine, as Khalasi for Water Tank, Survey Labourer and Helper all the year except Holidays and Sunday yet are continuously working accordingly since 1989. They were not appointed for the work as per the appointment procedure for the Labour. The witness (WW1) denies that they never continuously worked for 240 days in any calendar year. Likewise the statement of WW2 Sharat Chandra Behera 'B' who has admitted not to have any proof of payment of wages, but denied to have been kept for cleaning bushes and making road for temporary period only.

Other documents (all photo copies) Ext. W.2 Series Casual Payment Register (Muster Roll) w.e.f. May, 1990 to March, 1993 or aforesaid Ext. W.1 (the copy of casual workers from April, 1989 to Feb., 1992) does not prove that any of the seventeen workmen has completed 240 days attendance in any calendar year from 1989 to 1993 as required under Sec. 25B(2) (a) (ii) of the Industrial Dispute Act, 1947 so as to be called their continuous service in the present case. Rather the Ext. 3 series (three sheets) positively prove the confirmatory work orders issued in 1996, 1997 and 1998 to M/s. Trilochan Sahoo (one of the workmen) & Party for contractual Supply at CMPDI, Kosala Camp.

Likewise is the statement of WW2 Sharat Chandra Behera, B, one of the workmen who could not indicate whether they have performed altogether 240 days in a year.

9. Whereas the statement of MW1 Manoj Kumar Sahoo as the Ex-drilling of CMPDI Camp, Kosala during 1991 to August, 1993 now posted as Senior Manager at its H. Qr., Ranchi, is that these workmen were engaged at the Regional Institute of Management, Bhubaneswar at Kosala Drilling Camp on persistent demand of the local villagers for various type of casual workers ancilliary/incidental to drilling on daily basis. Admitting the photocopies of the Workers' Attendance (though noted as 'casual payment register') for May, 1990 to March, 1993 (Ext. W.2) and the photocopies of aforesaid Confirmatory Order dt. 17-8-96 bearing the signature of the Officer

Incharges concerned marked as Extt. W.3 series, he (MW1) has stated about the workmen to have performed the work of loading and unloading pipes etc. ancillary to the Shifting of the Drilling Machine during his tenure but not continuously. Proving 40 vouchers/Money Receipts Ext. M.1, three Work Orders dt. 17-8-96, 27-9-2003 and 14-6-2001 to Trilochan Sahoo & Party and Act/Trilochan Sahoo & Party contractual water supply to CMPDI, Kosala Camp, for 1996-97, for 2003 to 2005, and for June, 2001—May 2003 and Aug., 2003 to July, 2005 as Extt. 2 Series respectively, three Advance Adjustment with money receipts for June to Sept., 2001, for January—March, 2004 with Money Receipt for relevant period as Extt. 3 Series, Notice for Tender dt. 7-4-2001 issued by the Management as three Tender Documents dt. 7-4-2001 by Serial Workmen Nos. (9) M/s. Trilochan Sahoo & Party 15 M/s and (10) Sarat Chandra Sahu as Extt. 4 series and lastly the statement of paid voucher (8 Sheets) showing payment to different parties for period April to June, 2009 as Extt. 5 Series respectively, the witness (MW2) Amitava Das has affirmed that during his tenure April, 1992 to June, 1997 these workmen worked whenever required.

10. Similarly the statements of MW3 A. K. Mohanty and MW4 Tulsi Das, the Officer Incharge and the Camp Incharge of Kosala Drilling Camp of CMPDI (Orissa) respectively are quite supportive to that of Mr. Amitava Das (MW2). Accordingly, A. K. Mohanty (MW3), while his posting as the Officer Incharge of the Camp for the period December, 1989 to April, 1992 and from June, 1997 to August, 1999, the photocopy of the Attendance Sheet for December, 1989 to February 1992 under his signature (Ext. W.4) concerning workers, but he could not say him it was prepared, and these workers were engaged/appointed purely temporarily on contractual basis and that the payment is made to the contractual workers through vouchers only; they were never appointed by the Management according to the Appointment Rules. On perusal of the alleged Attendance Sheet, I find the Attendance Sheet has the number of the working days of the workmen for the said period; but none completed 240 days in a calendar year. Likewise, is the statement of MW4 Tulsi Das as the then Camp Incharge of Kosala Camp of the Management for his tenure from April to December, 1989 about the status of these workmen as casuals for the relevant period only. The engagement of a worker on daily basis temporarily requires no advertisement or interview etc., and while starting the drilling work they (management) had the full strength of manpower.

11. On the perusal and due consideration of the materials produced on behalf of the both the parties, I find in the Reference Case the indisputable facts is all these seventeen workmen were casually engaged for casual works and out of them particularly workmen as per the Corrigendum List Sl. No. 1 Sri Nityanand Dehuri, No. 4 Sarat Chandra Behra, B. No. 7. Jaikrishna Sahu, No. 8, Sudam

Raut, No. 9 Trilochan Sahu, No. 10 Sarat Chandra Sahu, No. 11 Haribandhu Beg, No. 12 Bhagrathi Sahu, No. 15 Pada Sahu with their own party concerned appeared to have temporarily worked for contractual water supply to the management for the relevant casual period as per the work orders (Ext. M.2 series) and accordingly they were paid through paid vouchers (Ext. M.3 series) as well as Ext. M.5 series (Paid Vouchers Bills). Moreover the alleged Attendance Sheet of the workmen under the signature of Mr. A. K. Mohanty (Ext. M.W.3) the Officer In-charge of the Camp does not bear the signature of any of the workmen so it can not be their attendance sheet rather it is a statement of their working days for the period April, 1989 to Feb., 1992 which clearly indicates none of the workmen had completed 240 days working continuously in any calendar year as required under Sec. 25B with heading "Definition of continuous service" under the Industrial Dispute Act, 1947.

Under these circumstances the Reference is responded as such :

It is held that the action of the management of M/s. Central Mine Planning & Design Institutes Ltd. is quite legally justified in not regularising the services of Sri Basant Kumar Dehuri and Nitayanand Dehuri and others concerned, because he or they were not employed for more than 240 days in the year 1989 and thereafter intermittently which itself speaks of their intermittent employment. Therefore these workmen are not entitled to any relief from any date whatsoever.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का.आ. 111.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (आईडी संख्या 6/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/414/1994-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 111.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/1998) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/414/1994-IR (C-1)]

B. M. PATNAIK, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute U/s. 10(1)(d) of the
I.D. Act, 1947

Reference No. 06 of 1998

PARTIES:

Employers in relation to the management of Katras
Project of M/s. BCCL and their workmen.

AND

APPEARANCES:

On behalf of the Workman : Mr. D. Mukherjee,
Ld. Advocate

On behalf of the Management : Mr. D. K. Verma,
Ld. Advocate

STATE : Jharkhand INDUSTRY : Coal

Dhandbad, the 15th/30th October, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947, has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/414/94-I.R. (Coal-I) dt. 30-12-1997.

SCHEDULE

“Whether Sh. Rajendra Prasad Sharma and 34 others (as per list enclosed) were the workmen of Katras Project of M/s. BCCL, Malkera, Dhanbad ? If so, whether the action of the management in denying employment to these workmen since December, 1993 is legal and justified ? If not, to what relief the said workmen are entitled and from what date ?”

2. The brief of the sponsoring union for the workmen Rajendra Pd. Sharma and 34 others (as per the list enclosed) is that they had/have been continuously working as permanent workmen performing the job of Tyndal and its related jobs – transporting of materials, Motor Pump, Gutter, Hydraulic Pump, conveyor and fitting and dismantling of conveyer etc. of permanent nature directly under the control of supervision of the Management at Katras Project since 1990. As such they have put in more than 190 days attendance in each calendar year. They had been serving

and producing the goods for the benefits of the colliery Management. They were directly linked with the Mines, so all of them are bound to work under the direct control and supervision of the management as per the Mines Act, Rules and Regulations. The management had been paying them wages of the N.C.W.A. in the names of different intermediaries until the implementation of the Wages Board Recommendation and N.C.W.As. In spite of several representations, the management did not regularise them in its service, rather it stopped them from their service w.e.f. 27-12-1993, having been annoyed with the spot enquiry of the LEO/C/Katras at their complaint. At last, the failure in reconciliation of their industrial dispute before the A.L.C. (C), Dhanbad, resulted at last in the reference for an adjudication as per the direction of Hon'ble Supreme Court to the Government of India for its illegal order refuting its reference. So the action of the management was quite illegal, arbitrary, vindictive and against the principal of natural justice and anti labour policy.

3. The union in its rejoinder with full categorical denials has pleaded that all the alleged paper arrangement were made to camouflage the real issue. Sri Mathura Mistry had also been working as a permanent Tyndal workman like other workmen involved in the case. All the allegations of the management are false, frivolous, motivated, hence denied.

4. Whereas the specific denialful contra pleading of the management is that there was no employer-employee relationship between the management and the persons concerned at any time, as they were never recruited by the management. The management has the recruitment procedure : inviting applications from eligible candidates against the vacant posts, constitution of a Selection Committee for selection of candidates for the vacant posts, the issuance of appointment letters with the terms and conditions of employment, identity cards, etc. then they get pay slips every month to draw their wages from the counter of the Company. But these persons were neither interviewed by the Selection Committee nor issued any appointment letters, identity cards or Pay slips. So no issue arises as to denial of their employment from December, 1993. It is the sponsoring Union Rastriya Colliery Mazdoor Sangathan Congress which aims at their employment in the Company through litigation.

5. Further case of the management is that Sri Mathura Mistry, one of the listed persons, was a contractor of the Company for carrying on some miscellaneous jobs. He has his own workshop at Chhatabad, PO : Katrasgarh, Dhanbad for smithy jobs involving sharpening and shaping and heat treatment of various equipments and machineries used by villages and general public, artists, fitters. He is also a contractor for repair of tubs and its ancillary parts used in coal mines for transportation of coal from mine to surface. He also performs some jobs of drilling and installations of machineries like pumps, haulages etc. to be done by fitter,

helpers, tyndals. The management of Katras Project as per the office order dt. 3-4-1991 awarded Mathura Mistry the contract for drilling holes in 60 pounds rails for 100 pcs each piece of our holes per hole at Rs. 4.50 total 400 holes at Rs. 1800. Likewise as per work orders dt. 9-5-1991, 8-10-1991, 28-3-1992 and 2-12-1992 of the management for drilling 64 holes in 16 pieces of pound rail at Rs. 4.50 per hole on the surface, for transportation of PVC, Sheeror and ARC cables and laying them for utilization of power supply for Rs. 10,273.50, for cutting the wireropes wornout by haulage after being it to the surface, and for transportation of 175 metres trailing cable at the cost of Rs. 18,48 awarded the contracts respectively in addition to some contracts awarded to him in 1993. All the contracts were not of permanent nature. He was not given any contract in 1994 and thereafter the total amount of the aforesaid contracts to Shri Mathura Contractor in the said years was too meagre for employment of such large number of 35 persons all the years. Actually he as contractor with two helpers were working on the jobs at Chhatabad. In fact, the reference came for adjudication as per direction of the Hon'ble High Court in a writ petition. These persons are not the workmen of the Company.

6. The management in its rejoinder has pleaded that all the entire allegations of the Union are false, baseless and imaginary. The management has implemented the wage Board Recommendations and NCWA. These persons have not worked as contractor workers even intermittently, so no question arises as to stopping them from working by the management. These persons are not entitled to any relief on other one.

FINDING WITH REASONING

7. In the instant case of regularisation, MWI Sheo Kumar Pd. Sinha, the Superintendent Engineer for the management and WWI Raghunath Rajwar, one of workers, for the Union have been examined.

Proving the five work orders of the Management all for the year 1991 as Exts. M.1 to 5, the statement of MWI Sheo Kr. Pd. Sinha is that the management at time provided Mathura Mistry, contractor the job on the basis of said work orders, and always paid him the charges/wages on the bills submitted by him after the completion of his jobs with the help of his own instruments; the management had no concern at all the with supervision of the contractual job assigned to aforesaid Mathura Mistry, so it is not in any way liable to provide jobs to the concerned workmen as staff of the colliery. According to the witness (MWI), the management in general practice does not invite a tender for a small job valued not more than Rs. 1,000 beyond which though for the work order (worth Rs. 10,273.50—Ext. M. 4), the management had invited a tender, no tender order was mentioned in it admittedly, the attendance of each contractual workmen or of regular one is recorded in

course of their work in the mines as per the procedure. He (MWI) has affirmed the jobs of a blacksmith and of a Tyndal are permanent in nature and the visit and spot enquiry of the Labour Enforcement Officer (Central) to the Colliery on 12-5-1993 while Sri N.C. Sinha, was the Personnel Manager but the management takes the help of the contractor absolutely on temporary basis for completion of excess job of Tyndals, but the suggestions of the Union Representative about the continuous working of the workmen for more than 240 days in a year altogether for years at the colliery under supervision of the management and their illegal stopping them from work on and from 27-12-1998 have been flatly denied by the witness (MWI).

8. In the face of the conspicuous admission of WWI Raghunath Rajwar as one of the workmen for self and for his colleagues that they were issued neither any appointment letter nor any interview letter nor I.D. Card nor any pay slip for their wages, he (WWI) has claimed to have continuously performed the work of Tyndal and Blacksmith etc. as per instruction of the Engineer and under the supervision of the management officials by putting their attendance for more than 254 days in each calendar years till 27-12-1993 as per the Attendance Register verification (the photocopies thereof as Ext. W.1 Series) and the joint note of discussion prepared by the LEO (C) and the Dy. C.P.M., N.C. Sinha (Ext. W.2) under their own signatures respectively on their complain, but soon thereafter, they were stopped from working there. He (WWI) specifically denied to have worked under contractor Mathura Mistry, one of the workmen.

As contracted with the oral evidence of workman Raghunath Rajwar (WWI), he has proved the authenticated photocopies of their attendance Register as Ext. W1 series only for three months of July, October and November, 1993.

9. Mr. D. Mukherjee, the Learned Counsel for the Union in reference to Sections 7 & 12 of the aforesaid act citing 1999 L.L.N. 12(SC)(DB), 1323, Secretary, Haryana State Electricity Board Vs. Suresh and Others related to Sec. 10 of "Prohibition of employment of contract labour" under the Contract Labour (R&A), Act, 1970 submits that in failure of the management to produce any licence and Registration Certificate of alleged contractor Mathura Mistry, one of the workmen the workmen shall be deemed to be the employees of the managements held by the Apex Court in the ruling as to Sec. 10 of the Act : 'On lifting the veil it's clear that there was no contract system with the Board as work was of perennial nature, contractor has to be kept out and so called contract system was only a camouflage; employer employee relationship is easily visualised; employees who have worked for more than 240 days in a year are entitled to be absorbed permanently in the Board (Paras 10, 13 to 18). The factum of the ruling related to the Electricity Board of Haryana which awarded

to a contractor the work of keeping its plants and stations clean and hygienic, and under its overall even administratively; contract itself stipulated number of employees engaged for the work, but Board neither registered as principal employer nor contractor was a Licenced one.

10. Further, Mr. Mukherjee, the Learned Advocate for the Union stressedly submits the application of the doctrine of "lifting veil as true test as held in the case of Hussain Bhao, Kalicut Vs. Alath Factory, 1978 Lab IC 126 & SCLJ Vol. 15 at page 112, that would discern the real employer is the management, not the immediate contract in the case where workers labour to produce goods or service for the business of another, that other is, in fact, the employer, as he has economic control over the workers subsistence, skill and continued employment; the court must be astute to avoid the mischief and achieve the purpose of law. It is submitted by Mr. Mukherjee that the workmen have proved by the Ext. W. 1 series prepared by the Labour Department at enquiry that they were engaged by the Management for the job of Tyndal and Smithy, the permanent posts, so they are entitled to regularisation as per the NCWA is a settlement as held by the Hon'ble Supreme Court in the case of Mohan Mahto Vs. M/s. Central Coal Field Ltd. & others, 2007 (115) FLR 427. As such it is submitted on behalf of the workmen for their regularisation in the light of the decisions of Hon'ble Apex Court in cases of G.M., O.N.G.C., Shilcher Contractual Workers Union, 2008 AIR, SCW 3996 and Bhilwara Dugdh, Utpadak S. Ltd. Vs. Vinod Sharma & Others 2011 LLR 1079.

11. In the case, the case has neither pleading nor proof on any of the parties about the management as a registered Principal employer and contractor Mathura Mistry as a licensed one. Violation of Sec. 12 of the C.L. (R&A) Act, 1970 by the contractor attracts penal provision of Secs. 23 & 25, but does not have the effect of rendering the contract labour employee of the Principal employer as held in the case of Dena Nath Vs. National Fertiliser Ltd. (1992) 1 SCC 695 : 1992 SCC (L&S) 349.

12. In response to Mr. D. Mukherjee's argument for the Union, Mr. D.K. Verma, the Learned Advocate for the Management has contended that the Inspection Note of the L.E.O. concerned (Ext.W2) proves that since the workmen were under the contractor, so the L.E.O. directed the Dy. C.P.M. concerned under Rule 71 of the C.L. (R&A) Central Rules, 1971 to authenticate the photocopies of the alleged Attendance Register for July, Oct. and Nov. 1993 as enquired by the L.E.O. (Ext. W.1 series—three sheets); it is merely a case of contractual labour and that the engagement of contract labour by a contractor does not create relationship of master and servant between contractor and principal employer as held in the case : Steel Authority of India Ltd. Vs. N.U. Water Frount Workers, 2001 LAB. I.C. 3656 (C.B.)(Para 101, 114, 117).

Further it is submitted by Mr. Verma, that such casual labour or Temporary employees have no right to be regular or permanent public employment, as absorption regularisation or permanent continuance of temporary contractual, daily wage or ad hoc employees appointed/recruited de hors the constitutional scheme of public employment on issuance of directions by Court, therefore, is not permissible as held the Hon'ble Apex Court in the case of Secretary, State of Karnataka & Others Vs. Umadevi (3)(CB)(in paras 3, 4, 12. & 43).

In view of the present facts and laws involved in it, it is also discernable that the verdict of Hon'ble Apex Court (larger C.B.) in Uma Devi (3) Case (2001) is binding all over India as upheld in the case of official Liguifafa Vs. Dayanand, (2009) 1 SCC (L & S) 943 (C.B.).

13. On the thoughtful considerations of the materials produced on behalf of both the parties as in view of the arguments advanced on their own behalf, I find that all the workmen were contractual casuals under contractor Mathura Mistry, but none of them completed 240 days attendance in any calender years as evident from Ext. 1 series (three photo copies of Attendance Register for July, October and November, 1993; rather workman under Sl. No. 33 Nasim Ahmad never worked in any of the said months, and rest ones casually worked for few days in one/two months. So there was no relationship of Employer and Employee between the workmen and the management. There is no camouflage on the part of the management in this regard. The argument of Mr. D. Mukherjee seems to be implausable. Hence, it is held and accordingly awarded: that Sri Rajendra Prasad Sharma and 34 others (as per List enclosed) were not the workmen of Katras Project of M/s. B.C.C.L., Malkera, Dhanbad, so no issue arises whether the action of the management in denying employment to these workmen since December, 1993 legal or justified. The said workmen are not entitled to regularisation. The copy of the Award be forwarded to the Labour Ministry for information and needful.

KISHORI RAM, Presiding Officer

LIST OF WORKERS

1. Mathura Mistry
2. Suresh Paswan
3. Raghunath Rajwar
4. Ramchandra Vishwakarma
5. Upendra Kr. Vishwakarma
6. Tribeni Mandal
7. Rambali Yadav
8. Karu Paswan (I)
9. Ram Prawesh Yadav

10. Praveen Kumar
11. Umesh Kumar
12. Krishna Prasad
13. Munshi Yadav
14. Ram Pravesh Kumar
15. Shankar Dayal Sharma
16. Vijay Bhuia
17. Jagarnath Kumar Vishwakarma,
18. Arjun Paswan
19. Rajendra Prasad Sharma
20. Baidhnath Mistry
21. Baijnath Prasad Diwakar
22. Surendra Kumar Mahto
23. Jagdish Prasad
24. Pradeep Kumar
25. Anil Sao
26. Shyam Sundra Sharma
27. Jageshar Modi
28. Nasim Ahmad
29. Ashok Paswan
30. Chhattu Paswan
31. Jai Prakash Gupta
32. Akhtar Mian
33. Nazim Ahmad
34. Madhesh Kumar
35. Karu Paswan (II)

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 112.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, धनबाद के पंचाट (आई डी संख्या 7/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/332/1997-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 112.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/332/1997-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Sri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 7 of 2003

PARTIES:

Employer in relation to the management of Mohuda Area of M/s BCCL and their workmen.

APPEARANCES:

On behalf of the Workman : None

On behalf of the Management: Mr. D. K. Verma, Ld. Adv.

State : Jharkhand.

Industry : Coal

Dated, Dhanbad, the 21st Nov., 2012

AWARD

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/332/97-IR (C-I) dated 10-12-2002.

SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union from the management of Bhatdee Colliery of Mohuda Area of M/s BCCL for employment on the compassionate ground according to the provisions of N.C.W.A. of Smt. Budhan Devi wife of Sri Indra Singh, Driller of Bhatdee Colliery is legal and justified? If so, what relief the dependant of the workman is entitled?"

2. Mr. D. K. Verma, the Learned Advocate for the management is present. None is present on behalf of workman/union nor W.W. produced despite several notices for it. The case is pending for the evidence of the workman since 28-4-2006 due disinterestedness of the Union/workman. The case is closed and accordingly an Award of No Dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 113.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, धनबाद के पंचाट (आई डी संख्या 223/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/338/1997-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 113.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 223/1998) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/338/1997-IR (C-1)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Sri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 223 of 1998
(Analogous with Ref. No. 60 of 2003)

PARTIES:

Employer in relation to the management of Jealgora Colliery of the BCCL and their workman.

APPEARANCES:

On behalf of the Workman : None

On behalf of the Management: Mr. D. K. Verma. Ld.
Counsel

State : Jharkhand. Industry : Coal

Dated, Dhanbad, the 29th November, 2012

AWARD

1. The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section

10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/338/1997-IR (C-1) dated 1-12-1998.

SCHEDULE

“Whether the action of the management of Jealgora Colliery in stopping Sri Shyam Bauri, M/Loader from duties w.e.f. 26-12-92 is justified? if not, to what relief the workman is entitled?”

2. None appeared for the unions concerned/workman Shyam Bauri nor any witness for the evidence of the workman produced. But Mr. D. K. Verma, the Learned Counsel for the management with management witness B.B. Roy, the Personnel Manager of the Colliery concerned present for the evidence of the management on preliminary point. Mr. Verma submits that the examination of the aforesaid Roy as MW I at P. P. would be futile in lack of the Union/workman, as the case involves the dismissal of workman Shyam Bauri but neither the Union Representatives nor the workman has been appearing in the case since long time.

The perusal of the case records reveals that despite Regd. notices dt. 10-1-2012 and 24-7-2012 having been issued to the Union Representative of the Union concerned on his address noted in the Reference, none appeared nor any proper representation since 10-1-2012 despite Regd. noticed to the Union concerned for proper representation. The present Reference along with its Analogous Reference No. 60/2003 as per order dated 11-11-2011 of the Tribunal relates to the Schedules concerning the stoppage of workman Shyam Bauri and his dismissal respectively. The conduct of the Union Representative as well as that of the workman implies that neither the Union Representative nor the workman is interested in pursuing the case. Since it is the oldest case of the year 1998 and of 2003. So it is closed for the default of the Union Representative and the workman himself. Accordingly, an order of No Industrial Dispute Award existent is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 114.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-1, धनबाद के पंचाट (आई डी संख्या 97/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/101/2003-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 114.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 97/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/101/2003-IR (C-I)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of reference U/s 10(1)(D)(2A) of I.D.
Act.

Reference No. 97 of 2003

Employer in relation to the management of Sijua
Area of M/s. B.C.C.L.

AND

Their Workman.

PRESENT:

SRI Ranjan Kumar Saran, Presiding Officer

APPEARANCES:

For the Employers : Sri D. K. Verma, Advocate

For the Workman : Sri U. P. Sinha, Advocate

State : Jharkhand. Industry : Coal

Dated the 3rd December, 2012

AWARD

By Order No. L-20012/101/2003-IR (C-I) dt. 9-9-2003, the Govt. of India, Ministry of Labour, has in exercise of powers as conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the demand of the union to regularise Sri Ujit Kumar Saw as Telephone Operator, working at Kankanee Colliery under Sijua Area of M/s BCCL is proper and justified ? If so, to what relief is the concerned workman entitled and from what date ?"

1. Both parties appeared after notice. Submitted claim statements and rejoinder. Case has been posted for evidence for the side of management. In the meantime the workman

constantly remained absent for last 10 dates. Though he has been examined on chief did not come forward for cross examination. Even his lawyer though present did not submit anything. It is presumed that the workman lost interest in prosecuting the case. Presumably this is no dispute subsist between the parties. No Dispute award passed. Communicate to the Ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 115.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-1, धनबाद के पंचाट (आई डी संख्या 22/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/221/2002-आई आर (सी-1)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th December, 2012

S.O. 115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20-12-2012.

[No. L-20012/221/2002-IR (C-I)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of reference U/s 10(1)(d)(2A) of I.D.
Act, 1947

Reference No. 22 of 2003

Employers in relation to the management of Amlabad
Colliery of M/s. B.C.C.Ltd.

AND

Their Workmen.

PRESENT:

SRI RANJAN KUMAR SARAN, Presiding Officer

APPEARANCES:

For the Employers : Sri U. N. Lal, Advocate
 For the Workman : Sri S. C. Gaur, Advocate
 State : Jharkhand. Industry : Coal

Dated, the 3rd December, 2012

AWARD

By Order No. L-20012/221/2002-IR (C-1), dt. 24-1-2003, the Govt. of India, Ministry of Labour, has in exercise of power as conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

SCHEDULE

“Kya B.C.C.L. Amlabad Colliery Ke Prabandhan Dwara Sri Arjun Mahato, Miner Ki Sewain Dinank 6-11-2000 Se Smapat Kiya Jana Uchit, Vidhivat Avam Nayaysangat Hai ? Yadi Nahin To Karmkaar Kis Rahat Ke Patra Hain ?”

1. In the above reference, Parties are noticed, claim statements rejoinder filed. Proceeding progressed from 2003. But at this stage of the case, the learned counsel for the workman files a petition and submitted that, the workman is not interested to proceed with the case. Since the workman is not interested with the case, the dispute between the parties have been resolved.

2. Hence ‘No Dispute Award’ is passed. Communicate the fact to Ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2012

का. आ. 116.—जबकि मैसर्स जी ई ए प्रोसेस इंजीनियरिंग प्राइवेट लिमिटेड (बड़ोदरा क्षेत्र में कोड संख्या जी जे/21006 धारक पूर्व मैसर्स एल एण्ड टी निरो लिमिटेड (एतदुपरान्त प्रतिष्ठान के रूप में संदर्भित) को कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 की धारा 17(1) (क) के अंतर्गत दिनांक 1-10-1997 से छूट प्रदान करते हुए भारत के राजपत्र में अधिसूचना संख्या एस-35015/8/2004-एस एस-II, दिनांक 9 जुलाई, 2004 को प्रकाशित की गयी थी।

2. जबकि मैसर्स जी ई ए प्रोसेस इंजीनियरिंग प्राइवेट लिमिटेड (पूर्व मैसर्स एल एण्ड टी निरो लिमिटेड) ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 के पैरा 27क के परिशिष्ट-क में निरूपित छूट संबंधी शर्तों का उल्लंघन किया है और जिससे भारत सरकार द्वारा कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरान्त अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत प्रदान की गयी छूट को रद्द किए जाने का पात्र है।

3. जबकि, प्रतिष्ठान को कारण बताओ नोटिस का नोटिस प्राप्त होने के 15 दिन के अंदर अपना उत्तर प्रस्तुत करने के लिए

दिनांक 12 मई, 2011 को एक अवसर प्रदान किया गया था तथा केन्द्रीय भविष्य निधि आयुक्त के परामर्श से दिनांक 27 मई, 2011 के उनके उत्तर की जांच करने के पश्चात्, यह पाया गया है कि वह संतोषजनक नहीं है।

4. अतः, अब, केन्द्र सरकार, एतद्वारा उक्त अधिनियम की धारा 17 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त प्रतिष्ठान को प्रदान की गयी छूट को तत्काल प्रभाव से रद्द करती है।

[सं. एस-35017/3/2011-एस एस-II]

नरेश जायसवाल, अवर सचिव

New Delhi, the 31st December, 2012

S.O. 116.—Whereas a notification No. S-35015/8/2004-SS.II dated 9th July, 2004 granting exemption w.e.f. 1-10-1997 under section 17(1)(a) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 to the M/s GEA Process Engineering Private Limited (formerly M/s L & T Niro Limited) Bearing Code No. GJ/21006 in Vadodara region (hereinafter referred to as the establishment) was published in the Gazette of India.

2. Whereas M/s GEA Process Engineering Limited (formerly M/s L & T Niro Limited) has violated the conditions of exemption delineated in Appendix-A of Para 27A of the Employees' Provident Funds Scheme, 1952 and thereby deserves the cancellation of exemption granted by Government of India under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

3. Whereas the establishment was given an opportunity on 12th May, 2011 to file its reply to the Show Cause Notice within 15 days of the receipt of Notice and after examining their reply dated 27th May, 2011 in consultation with Central Provident Fund Commissioner, it has been found that the same is not satisfactory.

4. Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 17 of the EPF and MP Act, 1952 the Central Government hereby cancel the exemption granted to the said establishment with immediate effect

[No. S-35017/3/2011-SS-II]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 3 जनवरी, 2013

का. आ. 117.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 फरवरी, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी हैं) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा-77, 78,

79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

केन्द्र	शिवगंगै नगरपालिका के नगर सीमा तथा राजस्व गांव के अंतर्गत आने वाले क्षेत्र
शिवगंगै जिले में	1. पुदुपट्टी
शिवगंगै तालुक,	2. ओक्कुर
शिवगंगै एवं कलायार कोइल	3. पिल्लुर
	4. नटरानसंकोट्टै
	5. कलायारकोइल
	6. मधगुपट्टी
	7. अरासनुर
	8. पेरियाकोट्टै

[सं. एस-38013/02/2013-एस एस-1]

नरेश जायसवाल, अवर सचिव

New Delhi, the 3rd January, 2013

S.O. 117.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st February, 2013 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil Nadu namely :-

Centre	The Municipal limit of Sivagangai Municipality and the Revenue Villages of
Sivagangai and	1. Pudupatti
Kalayarkoil in	2. Okkur
Sivagangai Taluk,	3. Pillur
Sivagangai District	4. Nattarasankottai
	5. Kalayarkoil
	6. Madhagupatti
	7. Arasanur
	8. Periakottai

[No. S-38013/02/2013-SS-I]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 3 जनवरी, 2013

का. आ. 118.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 फरवरी, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (धारा 44 व 45 के सिवाय जो पहले से प्रवृत्त हो चुकी हैं) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध कर्नाटक राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

क्र. संख्या	राजस्व ग्राम का नाम	होबली	तालुक	जिला
1.	केनजारू गाँव	सुरतकल	मैंगलोर	दक्षिण केनरा

[सं. एस-38013/01/2013-एसएस-1]

नरेश जायसवाल, अवर सचिव

New Delhi, the 3rd January, 2013

S.O. 118.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st February, 2013 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Karnataka namely :-

Sl. No.	Name of the Rev. Village or Municipal Limits	Hobli	Taluk	District
1.	Kenjaru Village	Suratkal	Mangalore	South Canara

[No. S-38013/01/2013-SS-I]

NARESH JAISWAL, Under Secy.